TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1956

No. 30

GERALD D. NELSON, GERALDINE D. N. ACKER AND GERTRUDE N. FITZPATRICK, AS SUCCESSOR TRUSTEES UNDER THE WILL OF WILLIAM NELSON, DECEASED, AND HELEN D. MOLLER, APPELLANTS,

vs.

THE CITY OF NEW YORK

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

FILED JANUARY 25, 1956

JURISDICTION NOTED MAY 14, 1956

SUPREME COURT OF THE UNITED STATES

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INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUG. 6, 1956

—631-2

[fol. 1]

IN THE NEW YORK SUPREME COURT, APPELLATE DIVISION, SECOND DEPARTMENT

Kings County Clerk's Index No. 8700, Year 1951

In the Matter of the

Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York,

List of Delinquent Taxes

Sections 10, 11, 12 and 13

Borough of Brooklyn, Action No. 4

Serial No.	Section	Block	Lot
887	12	3831	12

Queens County Clerk's Index No. 3000, Year 1950

In the Matter of the

Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York,

List of Delinquent Taxes

Sections 1 and 2

Borough of Queens, Action No. 1

Serial No.	Section	Block	Lot
83	1	78	9

THE CITY OF NEW YORK,

Plaintiff-Respondent.

GERALD D. NELSON, GERALDINE D. N. ACKER and GERTRUDE N. FITZPATRICK, as Successor Trustees under the Will of William Nelson, deceased, and HELEN D. MOLLER,

Defendants-Foreclosed Owners-Appellants.

Statement Under Rule 234.

A motion under § 108 Civil Practice Act was made by defendants in each of the two foreclosure in rem actions

herein for relief from the default judgments suffered by defendants in each of those actions.

[fol. 2] The named defendants are the foreclosed owners of two parcels of real property taken by the City of New York for nominal water charges unpaid for four years.

The two motions were brought, heard and decided as one in Special Term, Part I, Supreme Court of New York, County of Kings.

Defendants appeal from two separate orders entered on the 14th day of May, 1954, in the Office of the Clerk of Kings County and the Office of the Clerk of Queens County denying defendants' motions to open the default judgments.

Defendants, the foreclosed owners are represented by Perkins, Malone & Washburn.

Plaintiff, the City of New York is represented by Adrian P. Burke, Esq., Corporation Counsel.

There has been no change of parties or attorneys since the commencement of this action.

[fol. 3] New York Supreme Court, County of Kings

Index No. 8700/1951

In the Matter

of the

Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York,

List of Delinquent Taxes.

Sections 10, 11, 12 and 13

Borough of Brooklyn, Action No. 4

Serial No.	Section	Block	Lot
887	12	3831	12

Notice of Appeal in Action No. 4.

Sirs:

Please take notice that Gerald D. Nelson, Geraldine D. N. Acker and Gertrude N. Fitzpatrick, as Successor Trustees under the Will of William Nelson, deceased, and Helen D. Moller, defendants, as the foreclosed owners of that

certain parcel designated above as Serial No. 887, Section 12, Block 3831, Lot 12, hereby appeal to the Appellate Division of the Supreme Court, Second Department, from an order entered in the Office of the Clerk of the County of Kings on the 14th day of May, 1954, denying said foreclosed owners' motion under Section 108, Civil Practice Act for relief from the default judgment of foreclosure in rem taken against them herein and for other relief, and [fol. 4] the defendants, the said foreclosed owners, appeal from each and every part of said order.

Dated: New York, N. Y., May 24, 1954.

Yours, etc., Perkins, Malone & Washburn, Attorneys for the foreclosed owners, Office and Post Office Address, 36 West 44th Street, New York 36, N. Y.

To:

Adrian P. Burke, Corporation Counsel, Municipal Building, New York 7, N. Y,

County Clerk, County of Kings, Joralemon Street, Brooklyn, N. Y.

[fol. 5] New York Supreme Court, County of Queens

Index No. 3000/1950

In the Matter
of the

Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York,

List of Delinquent Taxes

Sections 1 and 2

Borough of Queens, Action No. 1

Serial No.	Section	Block	Lot
83	1	78	9

Notice of Appeal in Action No. 1

Sirs:

Please take notice that Gerald D. Nelson, Geraldine D. N. Acker and Gertrude N. Fitzpatrick, as Successor Trus-

tees under the Will of William Nelson, deceased, and Helen D. Moller, defendants, as the foreclosed owners of that certain parcel designated above as Serial No. 83, Section 1, Block 78, Lot 9, hereby appeal to the Appellate Division of the Supreme Court, Second Department, from an order entered in the Office of the Clerk of the County of Queens on the 14th day of May, 1954, denying said foreclosed owners' motion under § 108, Civil Practice Act for relief from the default judgment of foreclosure in rem taken against them herein and for other relief, and the defend-
[fol. 6] ants, the said foreclosed owners, appeal from each and every part of said order.

Dated: New York, N. Y., May 24, 1954.

Yours, etc., Perkins, Malone & Washburn, Attorneys for Foreclosed Owners, Office and Post Office Address, 36 West 44th Street, New York 36, N. Y.

To:

Adrian P. Burke, Corporation Counsel, Municipal Building, New York 7, N.Y.

County Clerk, County of Queens, 88-11 Sutphin Boulevard, Jamaica, New York.

[fol. 7] New York Supreme Court, County of Kings

[Title omitted]

Order in Action No. 4 Appealed From—May 14, 1954

Gerald D. Nelson, Geraldine D. N. Acker and Gertrude N. Fitzpatrick, as Successor Trustees under the Will of William Nelson, deceased, and Helen D. Moller having moved this Court for an order pursuant to Section 108, Civil Practice Act, to relieve them, as the foreclosed owners of the above premises, from the judgment of foreclosure in rem entered in this action on May 19, 1952, and permitting them to redeem by payment of all tax liens with interest and permitting them to interpose an answer in the above entitled action,

[fol. 8] Now, on reading and filing the notice of motion dated March 16, 1954, together with proof of service

thereof, the affidavit of Gerald D. Nelson, verified the 3rd day of March, 1954, and the affidavit of William P. Jones, verified the 16th day of March, 1954, both in support of said motion, and the affidavit of Joseph Brandwen, verified the 13th day of April, 1954, and the affidavit of Joseph G. White, verified the 13th day of April, 1954, both in opposition thereto, and upon the reply affidavit of William P. Jones, verified the 14th day of April, 1954, and upon the proceedings heretofore had herein, and the said motion having come on to be heard on the 20th day of April, 1954, and after hearing Perkins, Malone and Washburn, Esqs., by William P. Jones, Esq., in support of said motion, and after hearing Adrian P. Burke, Corporation Counsel, Attorney for The City of New York, by Joseph Brandwen, of counsel, in opposition thereto, and after due deliberation having been had, and the Court having rendered its opinion and decision on file herein,

Now, on motion of Adrian P. Burke, Corporation Counsel, Attorney for The City of New York, it is

ORDERED, that this motion be and the same hereby is in all respects denied.

Enter,

A. J. DiG., J. S. C.

Granted May 14, 1954.

Francis J. Sinnott, Clerk.

[fol. 9] At a Special Term, Part I, of the Supreme Court of the State of New York, held in and for the County of Kings, in Room 1100-H, Municipal Building, Borough of Brooklyn, City and State of New York, on the 14 day of May, 1954.

Present—HON. ANTHONY J. DiGIOVANNA, *Justice.*

Index No. 3000—1950.

[Title omitted]

ORDER IN ACTION NO. 1 APPEALED FROM—May 14, 1954

Gerald D. Nelson, Geraldine D. N. Acker and Gertrude N. Fitzpatrick, as Successor Trustees under the Will of William Nelson, deceased, and Helen D. Moller having moved this Court for an order pursuant to Section 108, Civil Prac-

tice Act, to relieve them, as the foreclosed owners of the above premises, from the judgment of foreclosure in rem entered in this action on August 22, 1950, and permitting them to redeem by payment of all tax liens with interest [fol. 10] and permitting them to interpose an answer in the above entitled action,

Now, on reading and filing the notice of motion dated March 16, 1954, together with proof of service thereof, the affidavit of Gerald D. Nelson, verified on the 16th day of March, 1954, and the affidavit of William P. Jones, verified the 16th day of March, 1954, both in support of said motion, and the affidavit of Joseph Brandwen, verified the 13th day of April, 1954, and the affidavits of Joseph Brandwen and Joseph G. White, both verified the 13th day of April, 1954, filed in the office of the Clerk of the County of Kings in a certain action entitled "In the Matter of the Foreclosure of Tax Liens, etc., Sections 10, 11, 12 and 13, Borough of Brooklyn, Action No. 4, Serial No. 887, Section 12, Block 3831, Lot 12," and upon a copy of the said last mentioned affidavits of Joseph Brandwen and Joseph G. White annexed to the first mentioned affidavit of Joseph Brandwen, all in opposition to said motion, and upon the reply affidavit of William P. Jones, verified the 14th day of April, 1954, and upon all the proceedings heretofore had herein, and the said motion having come on to be heard on the 20th day of April, 1954, and after hearing Perkins, Malone and Washburn, Esqs., by William P. Jones, Esq., in support of said motion, and after hearing Adrian P. Burke, Corporation Counsel, Attorney for The City of New York, by Joseph Brandwen, of counsel, in opposition thereto, and after due deliberation having been had, and the Court having rendered its opinion and decision on file herein,

[fol. 11] Now, on motion of Adrian P. Burke, Corporation Counsel, Attorney for The City of New York, it is

ORDERED, that this motion be and the same hereby is in all respects denied.

Enter

in Queens County, A. J. DiG., J. S. C.

Granted May 14, 1954.

Francis J. Sinnott, Clerk.

SUPREME COURT OF NEW YORK, COUNTY OF KINGS

In the Matter of the Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of the City of New York, List of Delinquent Taxes, Sections 10, 11, 12 and 13, Borough of Brooklyn, Action No. 4

(Serial No. 887, Section 12, Block 3831, Lot 12).

NOTICE OF MOTION IN ACTION NO. 4 FOR RELIEF FROM DEFAULT JUDGMENT

Sirs:

Please take notice That upon the annexed affidavit of [fol. 12] Gerald D. Nelson, sworn to the 3rd day of March, 1954, the annexed affidavit of William P. Jones, sworn to the 16th day of March, 1954, and upon all the proceedings heretofore had herein, a motion, directed to the Court's discretion, will be made at Special Term, Part I of the New York Supreme Court to be held in and for the County of Kings in Room 1100-H, Municipal Building, Borough of Brooklyn, on the 31 day of March, 1954, at the opening of Court on that day, or as soon thereafter as counsel can be heard, for an order pursuant to Sec. 108, Civil Practice Act, relieving the defendants, the foreclosed owners of the fee title to that certain parcel, designated in the above action as Serial No. 887, Section 12, Block 3831, Lot 12—and known as 525 Powell Street, Brooklyn—from the default judgment of foreclosure *in rem* entered in said action on May 19, 1952, at a Special Term, Part II of this Court, and permitting the defendants to redeem the aforesaid parcel by payment of all tax liens, with interest, or permitting the defendants to answer in the above entitled action upon the following grounds: (1) that the default judgment herein was taken against defendants through their mistake, inadvertence, surprise or excusable neglect, to which the City itself wrongfully contributed and is thereby estopped to assert such default, (2) that the City failed to comply with Title D of Chapter 17 of the Administrative Code of the City of New York, (3) that the application by the City of New York of Title D of Chapter 17 of the Administrative Code for collection of tax liens on defendants' property, under all the circumstances of this

[fol. 13] case, violates defendants' rights as guaranteed by the Constitutions of the United States and of the State of New York, and for such other, further and different relief as to the Court seems just and proper.

Please take further notice that all papers in opposition hereto are required to be served five days before the return day of this motion.

Dated: New York, N. Y., March 16, 1954.

Yours, etc., Perkins, Malone & Washburn, Attorneys for Defendants, the foreclosed owners Office and Post Office Address: 36 West 44th Street, New York 36, N. Y.

To:

Adrian P. Burke, Esq., Corporation Counsel, Municipal Building, Borough of Manhattan, City of New York.

[fol 14] AFFIDAVIT OF GERALD D. NELSON, READ IN SUPPORT OF MOTION IN ACTION NO. 4

STATE OF NEW YORK,
County of New York, ss.:

Gerald D. Nelson, being duly sworn, deposes and says that he, Geraldine D. N. Acker and Gertrude N. Fitzpatrick are the duly appointed and acting Successor Trustees under the Will of William Nelson, who died April 3, 1905 a resident of the City, County and State of New York. With Helen D. Moller, individually, the said trustees are the foreclosed owners of that parcel of real estate known as 525 Powell Street, Borough of Brooklyn, and designated in the above action as Serial No. 887, Section 12, Block 3831, Lot 12, hereinafter described as the Powell Street property. Deponent is fully familiar with all the facts pertinent to this application and makes this affidavit in support of defendants' motion, to be relieved of their default in this action and for permission to redeem their property or answer in this action.

1. At all times material to this action deponent has resided in Princeton, New Jersey, Geraldine D. N. Acker and

Gertrude N. Fitzpatrick have resided in Poughkeepsie, New York, and Helen D. Moller has resided on Nantucket Island, Massachusetts.

[fol. 15] 2. On May 26, 1933, deponent was appointed a successor trustee to act under the Will of William Nelson. Since about 1935 deponent has been the "active" or "managing" trustee.

3. On the date of commencement of the above action, December 17, 1951, the aforesaid foreclosed owners were described on the records in the office of the City Treasurer as "Est. William Nelson, 36 West 44th St., New York 18, N. Y."

4. Since April 1940 defendants have maintained an office at 36 West 44th Street, Manhattan, where the records of the Trust are kept and from which the various mortgages and real properties belonging to the Trust have been managed. The Powell Street property was one of several real estate equities owned by the Trust.

5. Since 1938 defendants had employed in this office a trusted bookkeeper whose duty it was to keep the records and accounts of the Trust. It was deponent's custom to spend several hours a week at this office on the affairs of the Trust. At such visits it was the bookkeeper's duty to bring to deponent's attention all business affecting the Trust and to have ready for payment all bills, including bills for real estate taxes and water charges on the various Trust properties.

6. On or about November 13, 1952, the bookkeeper's attempted suicide precipitated deponent's discovery that the [fol. 16] bookkeeper had for a number of years been converting his employer's funds to his own use and otherwise acting so as to injure deponent and his co-trustees and deprive them of their property.

7. Deponent further discovered that the bookkeeper had concealed all notices from the City of New York pertaining to the Powell Street property including all notices of this foreclosure action and that he had concealed the bills for water charges, and the fact that the same had not been paid, for the years 1945 through 1952, although he had been regularly presenting to deponent for payment all of the bills for real estate taxes which were paid through the first half of 1951-52 (except for 1948-49, second half).

8. Deponent further discovered that another of the trust's real properties, 21-17 45th Avenue, Long Island City, Borough of Queens, had also been foreclosed in rem and title taken in the City of New York on August 22, 1950, also for the non-payment of water charges. While the bookkeeper had likewise concealed from deponent the bills for water charges on the 45th Avenue property for the years 1945 through 1950 and the notices of the in rem action affecting same he had been presenting deponent with real estate tax bills on that property which deponent paid through the second half of 1951-52. These tax bills made out and sent by the City to "Estate of William Nelson, 36 West 44th St., New York, 18, N. Y." for two years after the City had taken title to the 45th Avenue property and after the City had commenced this [fol. 17] action on December 17, 1951 against the Powell Street property substantially promoted the bookkeeper's fraud and aided in preventing deponent's discovery of the situation in time to avoid the foreclosure of the much more valuable Powell Street property.

9. Defendants' right to redeem in the Queens County foreclosure action is made the subject of a separate motion brought in this Court in conjunction with this motion.

10. On November 20, 1952, defendants through their attorneys wrote the Corporation Counsel for the City of New York advising him of their discovery in regard to their Powell Street property, the unusual circumstances involved and that all available measures would be promptly taken to recover said property. A copy of this letter is annexed hereto as "Exhibit A".

11. On November 25, 1952, in the office of the Bureau of City Collections, Municipal Building, Brooklyn, defendants offered to pay all of the charges on the Powell Street property together with interest but such payment was refused.

12. Until defendants discovered their bookkeeper's defalcations they believed that all charges against their property had been paid and were regularly being paid. Defendants at all times had idle funds in bank equal to many times the amount of any charges due against the Powell Street and the 45th Avenue properties.

[fol. 18] 13. Unaware that his Powell Street property was

in jeopardy deponent had signed his trustee check dated April 30, 1952 for $754.40 in payment of the second half 1951-52 real estate taxes on that property. The bookkeeper forwarded the check to the City Collector. The City returned this check with a letter dated May 2, 1952, stating that the time to pay taxes on the property expired February 13, 1952. This letter, like all similar communications, was intercepted and concealed by the bookkeeper.

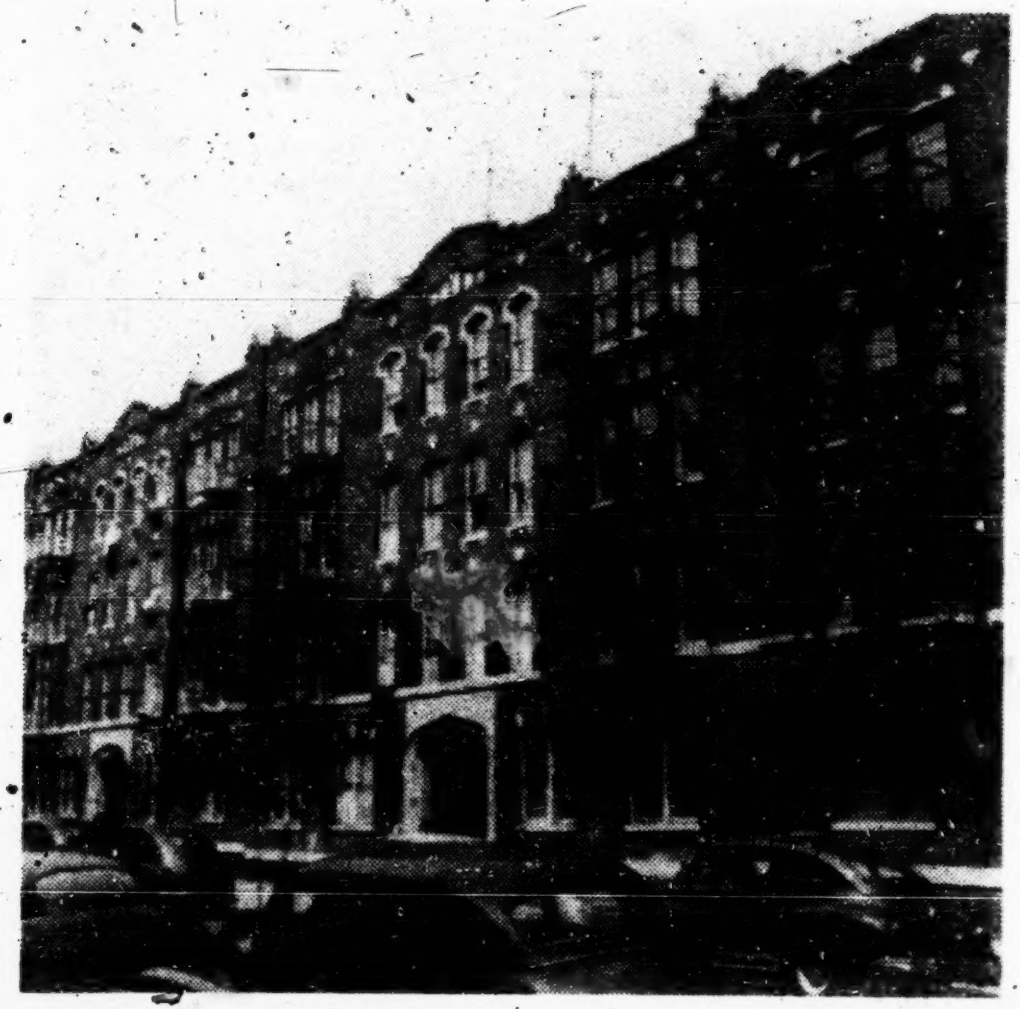
14. A civil action for fraud and conversion commenced against the bookkeeper on January 9, 1953 in the Supreme Court, New York County is now pending and the matter has in addition been submitted to the District Attorney's office.

15. Defendants acquired the fee simple title to the Powell Street property on October 30, 1934 by foreclosure of the first mortgage thereon and theretofore held by them and their predecessors as one of the assets of their aforesaid Trust. After October 30, 1934 defendants as owners managed the Powell Street property as an asset of the Trust.

16. The property consists of a four story apartment house, brick and stone construction, containing twenty-eight (28) apartments of four and five rooms, each with bath, occupying a plot fronting 59 feet 8 inches on the east side of Powell Street with a depth of 100 feet. On the [fol. 19] date of foreclosure the property was assessed for $46,000.00 and the gross annual rent roll was $9,390.60. Three views of the property are affixed below:

(Here follows Photolithograph, side folio 19a.)

12A



12A

19A

[fol. 20] 17. From the time defendants acquired the Powell Street property it has been continuously and fully rented and has yielded a reasonable return on investment. Deponent, considering it a valuable asset of the trust, carried on a systematic and regular program of maintenance and repair through a reputable real estate management firm in Brooklyn. Its loss came as a complete surprise and without any actual notice to deponent.

18. The data tabulated below is a significant record on the point of defendants' good faith, intent to pay and belief that they had paid all of the charges against their property:

[fol. 20]

	Real Estate Taxes			Assessed Valuation
1951/2	Second half	$754.40		
	(Payment refused by City See Para. 13)			$46,000.00
	First half	754.40	Paid	
1950/1	Second half	745.20	Paid	46,000.00
	First half	745.20	Paid	
1949/50	Second half	690.00	Paid	46,000.00
	First half	690.00	Paid	
1948/9	Second half	690.00	Unpaid	46,000.00
	First half	690.00	Paid	
1947/8	Second half	692.30	Paid	46,000.00
	First half	692.30	Paid	
1946/7	Second half	564.00	Paid	40,000.00
	First half	564.00	Paid	
1945/6	Second half	558.00	Paid	40,000.00
	First half	558.00	Paid	
1944/5	Second half	586.00	Paid	30,000.00
	First half	586.00	Paid	
1943/4	Second half	610.00	Paid	40,000.00
	First half	610.00	Paid	
1942/3	Second half	594.00	Paid	40,000.00
	First half	594.00	Paid	
1941/2	Second half	592.00	Paid	40,000.00
	First half	592.00	Paid	

[fol. 21]

	Real Estate Taxes			Assessed Valuation
1940/1	Second half	$598.00	Paid	$40,000.00
	First half	598.00	Paid	
1939/40	Second half	575.25	Paid	39,000.00
	First half	575.25	Paid	
1939	First half	561.60	Paid	39,000.00

The above items are taken from receipted tax bills in defendants' possession.

All real estate taxes from the second half of 1938 back to October 30, 1934, the date defendants acquired the Powell Street property, were also paid.

	Water Charge	Sewer Rent	Other Assessment
1951	$271.50 Unpaid	$90.50 Unpaid	
1950	271.50 Unpaid		
1949	271.50 Unpaid		
1948	271.50 Unpaid		
1947	271.50 Unpaid		
1946	271.50 Unpaid		
1945	271.50 Unpaid		
1944	271.50 Paid		
1943	271.50 Paid		
1942	271.50 Paid		$59.65 Sewer Paid
1941	271.50 Paid		
1940	271.50 Paid		
1939	271.50 Paid		$12.41 Sewer Paid

The above items are taken from receipted bills of the City of New York in defendants' possession. All other water charges, sewer rents and other assessments from 1939 back to October 30, 1934 were also paid.

	Gross Rents	All Expenses Including Real Estate Taxes and Water Charge but excluding depreciation	Net Income
1952	$3,729.55 (1st 5 months (1952)	$3,503.62 (1st 5 months 1952)	$ 225.93
1951	9,275.30	6,685.95	2,589.35
1950	9,226.64	6,131.19	3,095.45
1949	9,363.64	7,705.45	1,658 19

[fol. 22]

	Gross Rents	All Expenses Including Real Estate Taxes and Water Charge but excluding depreciation	Net Income
1948	$9,040.64	$7,131.74	$1,908.90
1947	9,179.35	6,513.52	2,665.83
1946	9,073.75	6,545.70	2,528.05
1945	8,216.50	7,913.05	303.45
1944	6,979.50	4,794.02	2,185.48
1943	7,402.25	4,129.37	3,272.88
1942	8,168.25	5,851.92	2,316.33
1941	9,453.23	6,873.85	2,579.38
1940	8,374.13	5,833.66	2,540.47
1939	8,196.80	5,424.08	2,772.72
1938	8,027.15	5,585.83	2,441.32
1937	8,174.75	5,336.02	2,838.73
1936	7,722.50	5,072.44	2,650.06
1935	8,186.43	6,007.04	2,179.39

19. During the entire period when through the bookkeeper's fraud these small arrears accumulated the trust's bank balance averaged over $20,000.

20. Upon inquiry at the office of the Board of Estimate, Municipal Building, Manhattan, on or about December 5,

1952 in an effort to recover the Powell Street property, deponent learned that it had been earmarked for inclusion within a proposed Housing Project. Deponent believes that the City intended not the collection of the relatively small amount of its just charges but the confiscation of the property in lieu of condemnation.

21. Defendants herewith offer to pay all liens with interest for the return of their property.

WHEREFORE, defendants pray that their motion be granted.

Gerald D. Nelson.

(Sworn to March 3, 1954.)

[fol. 23] EXHIBIT A, ANNEXED TO AFFIDAVIT OF GERALD D. NELSON

November 20, 1952

Denis M. Hurley, Esq.
Corporation Counsel,
City of New York

Municipal Building
New York 7, N. Y.

Re: 525 Powell Street, Brooklyn
Section 12; Block 3831; Lot 12
Owner: Estate of William Nelson

Dear Sir:

We represent the Estate of William Nelson and Gerald Nelson, executor and trustee under the Will of William Nelson.

Only a few days ago Mr. Gerald Nelson discovered for the first time that a Foreclosure Action in Rem had been instituted against the above property. This extraordinary circumstance has arisen from the heretofore unknown mental illness, and at the time of this writing unexplainable behavior of the person employed by the Trustee to manage the business details of the estate.

This letter is to serve notice on the City of New York that no further step should be taken in connection with the

above property which might further prejudice the rights of the Estate of William Nelson and that such legal action as may be necessary will be promptly taken to restore the Estate of William Nelson to ownership.

[fol. 24] In view of the unusual circumstances involved your cooperation is requested to restore the interests of the rightful owner.

It is believed that other parcels may be similarly affected as examination of records of the Estate continues.

Very truly yours,

WPJ:FG

AFFIDAVIT OF WILLIAM P. JONES, READ IN SUPPORT OF MOTION IN ACTION NO. 4

[Same Title.]

STATE OF NEW YORK,
County of New York, ss.:

WILLIAM P. JONES, being duly sworn, deposes and says that he is an attorney of the State of New York, a member of the firm of Perkins, Malone & Washburn, attorneys for the defendants the foreclosed owners herein, is fully familiar with this application and with all proceedings heretofore taken by defendants to recover their foreclosed property, and makes this affidavit in support of defendants' motion pursuant to § 108 CPA for relief from the default judgment entered in this action.

[fol. 25] Prior Action by Defendants to Recover Their Properties

1. After vainly offering to pay all tax arrears due the City of New York the present defendants on February 4, 1953 commenced an action in the Supreme Court pursuant to Article 15 of the Real Property Law to cancel the deed conveying title to the Powell Street property to the City of New York. In that action defendants also sought to recover from the City the difference between the liens for water charges ($72.50) and the sale price ($7,000.00) of

their 45th Avenue property in Queens which had also been foreclosed in rem and subsequently sold by the City. From the judgment entered on the order granting the City's motion for summary judgment and for judgment on the pleadings made in that action an appeal was taken to the Appellate Division, Second Department. On February 1, 1954, the following decision on that appeal was handed down:

> "By Adel, *Acting P. J.;* Wenzel, McCrate, Schmidt, and Beldock, *JJ.*
>
> *"Nelson, ap.* v. *City of N. Y. res.*—In an action pursuant to article 15, Real Property Law, and for other relief with respect to two parcels of property located, respectively, in Kings and Queens Counties, title to which has been acquired by defendant through in rem foreclosures, plaintiffs, former owners, appeal from a judgment entered on an order granting defandant's motion for judgment on the pleadings and for sum- [fol. 26] mary judgment. Judgment unanimously affirmed, without costs, and without prejudice to plaintiffs taking such proceedings as they may be advised with respect to moving in the foreclosure action to open their default and with respect to enforcing in that action whatever rights or remedies plaintiffs may have. No opinion."

The present motion is made in consonance with the foregoing decision.

The Foreclosure of the Powell Street Property.

2. On December 17, 1951, purportedly pursuant to Chapter 17, Title D of the Administrative Code of the City of New York, the City commenced an action in rem to foreclose all tax liens which were four years old or more on properties located in Sections 10, 11, 12 and 13 of the Borough of Brooklyn. Contrary to the basic requirements of § D17-5.0 of the Administrative Code the City attempted a composite action by filing with the County Clerk a composite list of delinquent taxes for all properties affected in

the above four sections 10, 11, 12, 13 instead of filing a separate list for each section and bringing a separate action for each section as prescribed by statute. The composite style of the action is as indicated in the copy of the "Notice of Foreclosure * * *" annexed hereto as Exhibit 1. Seventeen hundred and four affected parcels, among them defendants' Powell Street property were included in the composite list. When the action was commenced only three [fol. 27] water charges on defendants' property for the years 1945, 1946 and 1947 were four years old and these totaled only $814.50. The property was then assessed for $46,000.00, its actual gross annual rent roll for 1951 was $9,275.30, and the 1951 net return was $2,589.35.

3. On May 19, 1952 judgment of foreclosure was entered in this action, and pursuant to said judgment a deed of even date purported to vest title in the City. The City has since been in possession, presumably collecting the $9,275.00 gross annual rents.

The Foreclosure in Rem of Defendants' Queens Property Known as 21-17 45th Avenue, Long Island City

4. On May 22, 1950, purportedly pursuant to Chapter 17, Title D of the Administrative Code of the City of New York, the City commenced an action in rem to foreclose all tax liens which were four years old or more on properties located in Sections 1 and 2 of the Borough of Queens. Contrary to the requirements of § D17-5.0, as in the Brooklyn action, the City attempted a composite action by filing with the County Clerk one composite list of delinquent taxes for all properties affected in both Sections 1 and 2 instead of filing a separate list for each section and bringing a separate action for each section as prescribed by the statute. The composite style of that action is as indicated in the copy of the "Notice of Foreclosure * * *" annexed hereto as Exhibit 2. Included in the List, with 294 other parcels, was defendants' prop- [fol. 28] erty known as 21-17 45th Avenue, Long Island City, described in that action as Serial No. 83, Section 1, Block 78, Lot 9.

5. When the action was commenced only water charges on the property for 1945 and 1946 were four years old

and these totaled only $72.50. The property was then assessed for $6,000.00. Title purportedly vested in the City on August 22, 1950. On February 21, 1951, the City sold defendants' 45th Avenue property to one John Balog for $7,000, retaining the entire proceeds.

6. While defendants' right to redeem in the Queens foreclosure action is made the subject of a separate motion in that action, brought in this Court in conjunction with this motion, the extra-legal actions of the City in respect to the 45th Avenue property had a direct bearing upon, and directly contributed to the loss of defendants' much more valuable Powell Street property. For this reason deponent urges this Court to consider the two motions together.

7. As stated in the supporting affidavit of Gerald D. Nelson the City continued to bill the "Estate of William Nelson" for the real estate taxes on the 45th Avenue property for two years after the City had purported to take title and for a year even after the property had been sold to John Balog. Such bills—photostatic copies of which are annexed hereto as Exhibits 3 and 4—were entirely improper and violated the express provisions of § D17-16.0 of the Administrative Code.

[fol. 29] 8. The City sent these bills to defendants in face of the data noted under "Remarks" on the master tax sheet for the property—a photostatic copy of which is annexed hereto as Exhibit 5— and in face of the two address cards filed on the records of the City Collector which indicate the "Bureau of Real Estate" of the City of New York to be the "person" to whom tax bills should have been sent. Copies of the said two cards are annexed hereto as Exhibits 6 and 7.

9. As Mr. Nelson states in his affidavit the fraudulent bookkeeper presented him with these bills, and he paid them, as in the normal course of business. The result of the City's non-compliance with the statute was to delay discovery of the loss of the 45th Avenue property, to promote the fraud of the bookkeeper and prevent discovery of the earlier property loss and the fraud in time to avert the foreclosure of the Powell Street property which occurred two years later. It is worthy of note

that the master tax sheet for the Powell Street property—photostatic copy of which is annexed hereto as Exhibit 8—bears the notation "no bills to be issued."

The Abuse by the City of New York of the in Rem Procedure in This Case

10. Widespread injustice has resulted from the City's oppressive application of Title D of Chapter 17 of its Administrative Code, which arms the City with the foreclosure in rem method of collecting tax liens.

11. On October 19, 1953, the Justices of the Supreme [fol. 30] Court of the State of New York, County of Kings, submitted a report to the Temporary Commission on the Courts headed by Honorable Harrison Tweed, Chairman entitled:

Recommendations and Suggestions With Respect to The Commission's Study of The Judicial System of The State.

Among the suggestions made by the Justices was the following:

"(q) *Foreclosure in rem by the City of New York.* The provision of the Administrative Code with respect to the right of the owner to redeem should be liberalized in order to prevent injustices which frequently result from the ignorance of the owner of the pendency of the foreclosure proceeding."

12. Under all the circumstances of this case the City's application of the in rem procedure to collect two relatively insignificant water charges on defendants' two properties—was an abuse of the purpose of the statute, was contrary to the intent of the Legislature, and violated defendants' rights under the Constitutions of the United States and of the State of New York.

13. While Title D of Chapter 17 of the Administrative Code of the City of New York may be generally constitutional, it is defendants' position that its application in this case was confiscatory, amounting to taking private property for public use without just compensation.

14. Title D, added to the Code by Chapter 411 of the [fol. 31] laws of the State of New York, 1948 and passed especially for the City of New York is modelled directly on TITLE 3, FORECLOSURE OF THE TAX LIEN BY ACTION IN REM of Article 7-A of the Tax Law of the State of New York effective October 1, 1939, which it very closely parallels and from which it was largely adopted verbatim. The purpose of the two statutes being identical the intent of the Legislature in enacting Title 3 of Article 7-A is equally applicable to the interpretation of Title D of the Code.

15. The legislative history of Article 7-A as contained in the "Governor's Bill Jacket, Year 1939, Chapter 692" clearly expresses the legislative intent behind the in rem procedure as contained in Title 3. It was to provide tax districts with a speedy and inexpensive method for collecting taxes in particular circumstances where the existing methods had proved inadequate. Pertinent excerpts from papers in the above bill jacket are annexed hereto as Exhibits 9-15. Deponent has been informed by the Law Librarian of the New York State Law Library, Albany, New York, that there is no bill jacket for Chapter 411, Laws of 1948 (Title D of the Code).

16. Without variation the comments of the several organizations and individuals who sponsored Article 7-A establish that the Legislature did intend the in rem procedure to be applied only to certain classes of properties burdened by heavy accumulations of back taxes, such as vacant lands, run down "improved" properties ("improved" being used in the narrowest sense to indicate the existence of some sort of structure), properties which have been "abandoned" by the owners or properties of [fol. 32] hopelessly low economic value on all of which arrears of taxes go back many years, and which have long been lost to the tax rolls of the municipality and have ceased to pay any share of the burden of Municipal Government, and are in every respect properties in which the owner's equity has been virtually extinguished by old tax obligations. Exhibit 9, an address by Arnold Frye, Chairman of the Committee on Municipal Law, New York State Bar Association, made at the conference

of mayors and other municipal officials at Elmira, New York, June 8-10, 1938, is typically expressive of this legislative intent:

> "* * * The improved procedure is designed to put back on the tax rolls, uninhabited lands and vacant lots * * *. Returning to urban regions, in one of the suburban counties in New York State, many plots were given away in the Nineties with boxes of soap, have since been virtually abandoned and have paid no taxes. * * * There are in New York State alone, literally a great many thousands of parcels of vacant lands and broken down improved properties which have been so long virtually abandoned by their owners, that the cost of the title searches alone would exceed the value. To get these properties back on the market or to enable the municipalities to use them for parks or for public purposes, it is necessary to clear the titles by some inexpensive procedure. * * * The committees, therefore, turned their attention in the first instance, to the drafting of an in rem procedure, on the general lines of that [fol. 33] set forth in the Model Tax Collection Law mentioned above. It was designed to meet the situation described above, of vacant lands or lots of low economic value which have been virtually abandoned by their owners, or which were subject to accumulated taxes in excess of the land value."

Exhibit 10, a memorandum submitted to the Governor of New York by George Xanthaky, one of the active sponsors of the bill, Exhibit 11, Bulletin No. 1 of the New York State Bar Association Committee on State Legislation, 1938, and Exhibit 12, Bulletin No. 204, 1939, pp. 505-508, of the Committee on State Legislation Of The Association Of The Bar Of The City Of New York confirm the intended use of the in rem procedure as expressed above.

Exhibit 11 states:

> "In a recent study made for the State Planning Council in the cities of Rochester, Syracuse, Yonkers,

Mt. Vernon, New Rochelle and in 47 of the 62 towns in Erie, Monroe and Westchester Counties, it is shown that of 292,901 vacant lots and lands on the tax rolls, 162,771 are in arrears for taxes and assessments, that the greater part of these were already in arrears in 1931 and that many had been in arrears as far back as 1917. In many cases the accumulated arrears are well in excess of the assessed valuations * * *.

"This bill is effectively designed to remove this obstacle to the elimination of dead wood from the tax rolls * * *."

[fol. 34] 17. The legislature did not intend the in rem procedure to be applied to valuable income producing properties. On the contrary it enacted Title 2 of Article 7-A for the collection of tax liens on this type of property. Title 2 affords an improved method of foreclosure of the tax lien as in an action to foreclose a mortgage, preserves the surplus above the tax liens resulting from the required sale for the benefit of the owner, and avoids the forfeiture and confiscation characteristic of the in rem procedure. Exhibit 9 states where the legislature intended Title 2 to apply:

"* * * In order to provide an adequate procedure for foreclosure of taxes on improved lands or of current taxes on land of higher economic value, the committees decided to include in the bill the normal procedure of action to foreclose as to foreclose a mortgage, but for the benefit of property owners and mortgagees, took the best provisions from existing tax acts * * *."

Exhibit 10 says of the intended application of Title 2:

"Title 2 is practically a reenactment of existing 7A of the Tax Law. It provides the machinery for the foreclosure of a tax lien as though it were a improvements designed to cut costs and strengthen mortgage. It contains, however, numerous procedural title. * * * The provisions of this title are intended to be used against income producing property."

[fol. 35] 18. It is further clear that the legislature intended Tax Districts to collect their current tax liens promptly by use of Title 2. Exhibit B states:

> "The in rem procedure, thus briefly outlined, is limited to property on which a tax district has liens at least four years old. The other procedure" (Title 2) "provided by the bill, that of action as to foreclose a mortgage is intended to be the normal method applied to valuable improved property on which liens have not been accumulated" * * * "In order to provide an adequate procedure for foreclosure of taxes on improved lands or of current taxes on land of higher economic value, the committees decided to include in the bill the normal procedure of action to foreclose as to foreclose a mortgage, * * *."

This is confirmed in §166-f, Title 4, Article 7-A of the Tax Law, which reads in part:

> "(1) It shall be the duty of the collecting officer to enforce annually all tax liens by a tax sale, * * *."

Title A of Chapter 17 of the Administrative Code of the City of New York, while paralleling Title 2 in providing foreclosure of a tax lien as in an action to foreclose a mortgage, requires the tax lien to be three years old before it can be sold (§ 415(1)-25). The result of the City's unbalanced tax collection scheme is the temptation to "wait one more year" in order to apply the in rem procedure to collect all tax liens, even those against valu- [fol. 36] able income bearing property. Deponent was informed on November 13, 1953 by a member of the Corporation Counsel's office that the City intended to use the in rem method for collecting liens exclusively.

19. The use of Title D by its terms is optional:

> "§ D17-4.0 Foreclosure by Action in Rem.—Whenever it shall appear that a tax lien which has been due and unpaid for a period of at least four years from the date on which the tax assessment or other legal charge represented thereby became a lien, such tax lien, except as otherwise provided by this title,

may be summarily foreclosed in the manner provided in this title, * * *."

"§ D17-24.0 Sales and Foreclosures of Tax Liens. —Notwithstanding any of the provisions of this title the city may continue to sell tax liens, transfer the same to purchasers and become the purchaser at such sales of tax liens in the manner provided by this chapter."

20. The data and pictures in Gerald D. Nelson's affidavit beyond question establish that plaintiffs' two properties were not in any of the categories to which the legislature intended the in rem method to be applied. It would be absurd to suggest that the City could not have collected these small charges by the sale of a "transfer of tax lien" under Title A of the Code.

21. The optional use of Titles A or D in equitably car- [fol. 37] rying out the tax collection scheme implies the exercise of discretion on the part of the tax collector; but it is possible, if Title D is read with blinders, to pervert the in rem procedure to confiscate a valuable property for even a $1.00 tax lien if it is four years old, and if through inadvertence or fraud the hapless taxpayer has failed to redeem in time. The result obviously is an outrageous forfeiture. Through the extraordinary circumstances set forth in Mr. Nelson's affidavit defendants suffered just such a forfeiture.

22. A distinct element of "notice," on the other hand, is chargeable to the City arising from defendants' conscientious payment of their real estate taxes (much greater in amount than the water taxes), and from defendants' lack of response to warnings which amounted to positive notice to the City that defendants were unaware of the danger to their property, and that the use of the in rem procedure would certainly result in a disastrous forfeiture. The only real estate tax in arrears as to both properties when the in rem proceedings were begun was the second half of 1948-1949, and this again should have put the City on notice that some grave irregularity existed, for it was evidently abnormal that

plaintiffs should pay their current realty taxes promptly and in full while leaving a prior half year in arrears.

23. Furthermore the City had positive notice of the peculiar state of the Powell Street and 45th Avenue accounts since all the various charges are tabulated on one master tax sheet for each property (Exhibits 5 and [fol. 38] 8). Every time defendants' regular payments of current real estate taxes were entered on the tax sheets—that is, every six months—it was brought forcibly to the city's attention that something was amiss. The rigid allocation of defendants' tax payments to current real estate taxes exclusively—a bookkeeping device of the City—apparently prevented the payments in large amounts from being credited to the small arrears of water charges so that in rem foreclosure would have been long postponed and probably avoided altogether. On this state of facts the City had a duty to apply defendants' large current tax payments first to the oldest and most dangerous arrears.

24. In view of the clear intent of the legislature, the shocking disparity between the amount of the City's just charges and the value of the confiscated properties, and in light of all of the above circumstances, the use of the in rem procedure in this case was a flagrant abuse of the taxing power to accomplish a taking of private property for public use without just compensation, and a deprivation of property without due process of law.

25. To cover such cases as this the legislature included in Title D, § D17.23.0:

> "Severability of provisions.—The powers granted and the duties imposed by this title and the applicability thereof to any persons, the city or circumstances shall be construed to be independent and severable and if any one or more sections, clauses, [fol. 39] sentences or parts of this title or the applicability thereof to any persons, the city or circumstances shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof or the applicability thereof to other persons or circumstances, but shall be confined in its operation to the specific provisions

so held unconstitutional and invalid and to the persons and circumstances affected thereby."

This section has its counterpart in § 166-1, Title 4, Article 7-A of the Tax Law. This section is particularly pertinent to the facts here and defendants specifically invoke its application to the present motion.

26. While the general constitutionality of Title D might be conceded defendants challenge the constitutionality of its application to the circumstances of this case. For this reason deponent believes defendants' application is novel since deponent has not found any case where a taxpayer has sought relief specifically under § D17-23.0 or § 166-1 of the Tax Law.

27. Apart from unconstitutionality and the gross disparity between the amount due to the City and the value of the property taken, the coincidence of the City's illegal billing of real estate taxes on the 45th Avenue property combining with the extraordinary fraud perpetrated on the defendants by their bookkeeper, should appeal to the conscience of equity in defendants' favor.

[fol. 40] 28. Defendants in their prior action were denied any opportunity to examine the City before trial solely on the ground that:

> "All of the relevant facts and circumstances concerning the issues are contained in the judgment roll and are readily ascertainable by the plaintiff * * *"

However records of the City maintained in the Bureau of Real Estate show that the Powell Street property had been chosen for inclusion within a proposed "Brownsville East New York unsubsidized Housing Project." It is deponent's belief that this quasi public use of defendants' property was determined before its foreclosure in rem and that the City well knew from all the facts that it was likely to win an in rem foreclosure action by default and that the property could be very profitably confiscated to avoid the normal and more equitable condemnation proceeding.

Wherefore, deponent prays that defendants' motion under § 108 C. P. A. be in all respects granted and that defendants have such other, further and different relief as to the Court seems proper.

William P. Jones.

(Sworn to March 16, 1954.)

[fol. 41] Exhibit 1, Annexed to Affidavit of William P. Jones.

Form R550

Supreme Court, Kings County

Notice of Foreclosure of Tax Liens

By the City of New York

In the Borough of Brooklyn, Sections 10, 11, 12 and 13

General Description of Boundaries of Sections Affected:

Section Ten (10)

Beginning at the intersection of Broadway and Union Avenue; thence northerly along Union Avenue to Ten Eyck Street; thence easterly along Ten Eyck Street to Leonard Street; thence northerly along Leonard Street to Maujer Street; thence easterly along Maujer Street to Bushwick Avenue; thence northwesterly along Bushwick Avenue to Metropolitan Avenue; thence westerly along Metropolitan Avenue to Humboldt Street; thence northerly along Humboldt Street to Richardson Street; thence westerly along Richardson Street to Meeker Avenue; thence northeasterly along Meeker Avenue to the center of Newtown Creek; thence southeasterly, southwesterly and southerly along the center of Newtown Creek as it winds and turns to Onderdonk Avenue; thence southeasterly along Onderdonk Avenue to Seneca Avenue; thence southeasterly along Seneca Avenue to Flushing [fol. 42] Avenue; thence southwesterly along Flushing Avenue to Broadway; thence northwesterly along Broadway to beginning.

Section Eleven (11)

Beginning at the intersection of Broadway and Flushing Avenue; thence northeasterly along Flushing Avenue to Cypress Avenue, at the boundary line between the Borough of Brooklyn and the Borough of Queens; thence southeasterly along said boundary line and Cypress Avenue to Menahan Street; thence southwesterly along said boundary line and Menahan Street to St. Nicholas Avenue; thence southeasterly along said boundary line and St. Nicholas Avenue to Gates Avenue; thence southwesterly along said boundary line and Gates Avenue to Wyckoff Avenue; thence southeasterly along said boundary line and Wyckoff Avenue to Eldert Street; thence southwesterly along said boundary line and Eldert Street to Irving Avenue; thence southeasterly along said boundary line and Irving Avenue to Moffat Street; thence southeasterly, southwesterly, southeasterly, southwesterly and southeasterly along the boundary line between the Borough of Brooklyn and the Borough of Queens to the Interborough Parkway; thence southerly along the Interborough Parkway to Highland Boulevard; thence northeasterly along Highland Boulevard to Miller Avenue; thence southeasterly along Miller Avenue to East New York Avenue; thence southwesterly along East New York Avenue to Broadway; thence northwesterly along Broadway to Flushing Avenue, the point of beginning.

[fol. 43]

Section Twelve (12)

Beginning at the intersection of East 98th Street and East New York Avenue; thence easterly along East New York Avenue to Jamaica Avenue; thence easterly along Jamaica Avenue to Miller Avenue; thence southerly along Miller Avenue to New Lots Avenue; thence westerly along New Lots Avenue to Williams Avenue; thence southerly along Williams Avenue to Stanley Avenue; thence westerly along Stanley Avenue to East 107th Street; thence northwesterly along East 107th Street to Avenue "D"; thence southwesterly along Avenue "D" to East 98th Street; thence northwesterly along East 98th Street to beginning.

Section Thirteen (13)

Beginning at the intersection of New Lots Avenue and Miller Avenue; thence northerly along Miller Avenue to Highland Boulevard; thence westerly along Highland Boulevard to Interborough Parkway; thence northeasterly along Interborough Parkway to a point in said Parkway at the boundary line between the Borough of Brooklyn and the Borough of Queens; thence northeasterly along said boundary line and Interborough Parkway to a point; thence southerly along the said boundary line to the northerly side of Robert Street at westerly side of Heath Place; thence easterly along said boundary line along northerly side of Robert Street to easterly side of Robert Place; thence southerly along said boundary line and the easterly side of Robert [fol. 44] Place to a point; thence northeasterly and easterly along the said boundary line to a point; thence southerly along said boundary line and along said boundary line on Elderts Land to 95th Avenue; thence easterly along said boundary line and 95th Avenue to Drew Street; thence southerly along said boundary line and Drew Street to Liberty Avenue; thence easterly along said boundary line Liberty Avenue to Ruby Street; thence southerly along said boundary line and Ruby Street to Dumont Avenue; thence westerly along Dumont Avenue to Elderts Lane; thence southerly along Elderts Lane to Linden Boulevard; thence westerly along Linden Boulevard to Lincoln Avenue; thence northerly along Lincoln Avenue to Dumont Avenue; thence westerly along Dumont Avenue to Fountain Avenue; thence northerly along Fountain Avenue to New Lots Avenue; thence southwesterly along New Lots Avenue to Miller Avenue, the point or place of beginning.

By Action in Rem.

Please take notice that on the 17th day of December, 1951, the Treasurer of the City of New York, pursuant to law, filed with the Clerk of Kings County, a list of parcels of property affected by unpaid tax liens, held and owned by said City of New York which on the 10th day of December, 1951, had been unpaid for a period of at least four years after the date when the tax, assessment, or other legal

charge became a lien. Said list contains as to each such parcel (a) a brief description of the property affected by [fol. 45] such tax lien, (b) the name of the last known owner of such property as the same appears on the assessment roll for the last calendar year or a statement that the owner is unknown if such be the case, (c) a statement of the amount of such tax lien upon such parcel, including those which shall have been due and unpaid for less than four years, together with the date or dates from which, and the rate or rates at which interest and penalties thereon shall be computed.

All persons having or claiming to have an interest in the real property described in such list of delinquent taxes are hereby notified that the filing of such list of delinquent taxes constitutes the commencement by the City of New York of an action in the Supreme Court, Kings County, to foreclose the tax liens therein described by a foreclosure proceeding In Rem and that such list constitutes a notice of pendency of action and a complaint by the City of New York against each piece or parcel of land therein described to enforce the payment of such tax liens. Such action is brought against the real property only and is to foreclose the tax liens described in such list.

No personal judgment shall be entered herein for such taxes, assessments or other legal charges or any part thereof.

This notice is directed to all persons having or claiming to have an interest in the real property described in such list of delinquent taxes and such persons are hereby notified further that a certified copy of such list of delinquent taxes has been filed in the main office of the city treasurer in the Borough of Manhattan and in the office of the city treasurer at Room 1, Municipal Building, Joralemon and Court [fol. 46] Streets, in the Borough of Brooklyn, and will remain open for public inspection up to and including the 13th day of February, 1952, which date is hereby fixed as the last date for redemption.

And take further notice that any person having or claiming to have an interest in any such parcel and the legal right thereto may on or before said date redeem the same by paying to the city treasurer the amount of all such un-

paid tax liens thereon and in addition thereto all interest and penalties which are a lien against such real property computed to and including the date of redemption. In the event that such taxes are paid by a person other than the record owner of such property, the person so paying shall be entitled to have the tax liens affected thereby satisfied of record or to receive an assignment of such tax liens evidenced by a proper written instrument.

Every person having any right, title or interest in or lien upon any parcel described in such list of delinquent taxes may serve a duly verified answer upon the corporation counsel setting forth in detail the nature and amount of his interest or lien and any defense or objection to the foreclosure. Such answer must be filed in the office of the county clerk in the county in which such real property is located and served upon the corporaton counsel at any time after the first date of publication but not later than twenty days after the date above mentioned as the last day for redemption. In the event of failure to redeem or answer by any person having the right to redeem or answer, such person shall be forever barred and foreclosed of all his right, title and interest and equity of redemption in and to [fol. 47] the parcel described in such list of delinquent taxes and a judgment in foreclosure may be taken by default.

Dated: December 17, 1951.

SPENCER C. YOUNG, TREASURER

Denis M. Hurley, Corporation Counsel, Office and Post Office Address, Municipal Building, Borough of Manhattan, City of New York.

EXHIBIT 2, ANNEXED TO AFFIDAVIT OF WILLIAM P. JONES.

Form R550

SUPREME COURT, QUEENS COUNTY

Notice of Foreclosure of Tax Liens

By the City of New York

In the Borough of Queens, Sections 1 and 2

General Description of Boundaries of Sections Affected:
Section One (1)

Beginning at the intersection of 44th Drive and the U. S. [fol. 48] Pierhead Line in the East River; thence easterly and southeasterly along 44th Drive to Thomson Avenue; thence easterly along Thomson Avenue to Skillman Avenue; thence southwesterly along Skillman Avenue to 27th Street; thence southerly along 27th Street to 47th Avenue; thence easterly along 47th Avenue to 30th Street; thence southerly along 30th Street to Hunters Point Avenue; thence westerly along Hunters Point Avenue to Dutch Kills Basin; thence southwesterly along Dutch Kills Basin to the boundary line between Queens and Kings Counties lying in the bed of Newtown Creek; thence westerly and southwesterly along the said boundary line to the U. S. Pierhead Line in the East River; thence northerly along said U. S. Pierhead Line to the beginning.

Section Two (2)

Beginning at the intersection of 44th Drive and Jackson Avenue; thence easterly along Jackson Avenue to Northern Boulevard; thence easterly along Northern Boulevard to Woodside Avenue; thence southerly along Woodside Avenue to 39th Avenue; thence westerly along 39th Avenue to 52nd Street; thence southerly along 52nd Street to Skillman Avenue; thence westerly along Skillman Avenue to 51st Street; thence southerly along 51st Street to 43rd Avenue; thence westerly along 43rd Avenue to 50th Street; thence southerly along 50th Street to Roosevelt

Avenue; thence southwesterly along Roosevelt Avenue to Queens Boulevard; thence westerly along Queens Boulevard to 48th Street; thence southerly along 48th Street to 47th Avenue; thence westerly along 47th Avenue to 46th [fol. 49] Street; thence southerly along 46th Street to 48th Avenue; thence westerly along 46th Avenue to 44th Street; thence southerly along 44th Street to 50th Avenue; thence westerly along 50th Avenue to 43rd Street; thence southerly along 43rd Street to the Midtown Highway; thence northwesterly along Midtown Highway to Greenpoint Avenue; thence southwesterly along Greenpoint Avenue; to Bradley Avenue; thence southerly along Bradley Avenue to 37th Street; thence westerly along 37th Street to Review Avenue; thence southeasterly along Review Avenue to Laurel Hill Boulevard; thence southwesterly along Laurel Hill Boulevard to the boundary line between the Counties of Queens and Kings, lying in the bed of the Newtown Creek; thence northwesterly and northerly along said boundary line to the intersection of said boundary line with Dutch Kills Basin; thence northeasterly along Dutch Kills Basin to Hunters Point Avenue; thence easterly along Hunters Point Avenue to 30th Street; thence northerly along 30th Street to 47th Avenue; thence westerly along 47th Avenue to 27th Street; thence northerly along 27th Street to Skillman Avenue; thence northeasterly along Skillman Avenue to Thomson Avenue; thence northwesterly along Thomson Avenue to 44th Drive; thence northwesterly along 44th Drive to the beginning.

By Action in Rem.

Please take notice that on the 22nd day of May, 1950, the Treasurer of The City of New York, pursuant to law, filed with the Clerk of Queens County, a list of par- [fol. 50] cels of property affected by unpaid tax liens, held and owned by said City of New York which on the 22nd day of May, 1950 had been unpaid for a period of at least four years after the date when the tax assessment, or other legal charge became a lien. Said list contains as to each such parcel (a) a brief description of the property affected by such tax lien, (b) the name of the last known owner of such property as the same appears

on the assessment roll for the last calendar year, or a statement that the owner is unknown if such be the case, (c) a statement of the amount of such tax lien upon such parcel, including those which shall have been due and unpaid for less than four years together with the date or dates from which, and the rate or rates at which interest and penalties thereon shall be computed.

All persons having or claiming to have an interest in the real property described in such list of delinquent taxes are hereby notified that the filing of such list of delinquent taxes constitutes the commencement by The City of New York of an action in the Supreme Court, Queens County, to foreclose the tax liens therein described by a foreclosure proceeding In Rem and that such list constitutes a notice of pendency of action and a complaint by The City of New York against each piece or parcel of land therein described to enforce the payment of such tax liens. Such action is brought against the real property only and is to foreclose the tax liens described in such list.

No personal judgment shall be entered herein for such taxes, assessments or other legal charges or any part thereof.

[fol. 51] This notice is directed to all persons having or claiming to have an interest in the real property described in such list of delinquent taxes and such persons are hereby notified further that a certified copy of such list of delinquent taxes has been filed in the main office of the city treasurer in the Borough of Manhattan and in the office of the city treasurer at Borough Hall, 120-55 Queens Boulevard, Queens Boulevard and Union Turnpike, in the Borough of Queens, and will remain open for public inspection up to and including the 12th day of July, 1950, which date is hereby fixed as the last date for redemption:

And take further notice that any person having or claiming to have an interest in any such parcel and the legal right thereto may on or before said date redeem the same by paying to the city treasurer the amount of all such unpaid tax liens thereon and in addition thereto all interest and penalties which are a lien against such real property computed to and including the date of redemp-

tion. In the event that such taxes are paid by a person other than the record owner of such property, the person so paying shall be entitled to have the tax liens affected thereby satisfied of record and to receive an assignment of such tax liens evidenced by a proper written instrument.

Every person having any right, title or interest in or lien upon any parcel described in such list of delinquent taxes may serve a duly verified answer upon the corporation counsel setting forth in detail the nature and amount of his interest or lien and any defense or objection to the foreclosure. Such answer must be filed in the office of the county clerk in the county in which such real prop-
[fol. 52] erty is located and served upon the corporation counsel at any time after the first date of publication but not later than twenty days after the date above mentioned as the last day for redemption. In the event of failure to redeem or answer by any person having the right to redeem or answer, such person shall be forever barred and foreclosed of all his right, title and interest and equity of redemption in and to the parcel described in such list of delinquent taxes and a judgment in foreclosure may be taken by default.

Dated: May 22, 1950.

Spencer C. Young, Treasurer

John P. McGrath, Corporation Counsel, Office and Post Office Address, Municipal Building, Borough of Manhattan, City of New York.

EXHIBIT 3, ANNEXED TO AFFIDAVIT OF WILLIAM P. JONES.

Bill for real estate taxes for 1950-51.

(Photoprint.)

[*For the Convenience of Court and Counsel This Exhibit (Photostatic Copy) Is Bound in on the Opposite Page.*]

(Here follows 1 Photolithograph, side folio 53)

General Note

The following pages are found on Card 2:

36A	42A
38A	42B
40A	66A

[fol. 54] EXHIBIT 4, ANNEXED TO AFFIDAVIT OF WILLIAM P. JONES

Bill for real estate taxes for 1951-52.

(Photoprint.)

[*For the Convenience of Court and Counsel This Exhibit (Photostatic Copy) Is Bound in on the Next Page.*]

(Here follows Photolithograph, side folio 55)

General Note

The following pages are found on Card 2:

36A	42A
38A	42B
40A	66A

[fol. 56] EXHIBIT 5, ANNEXED TO AFFIDAVIT OF WILLIAM P. JONES

Master tax sheet.

(Photoprint.)

[For the Convenience of Court and Counsel This Exhibit (Photostatic Copy) Is Bound in on the Next Page.]

(Here follows Photolithograph, side folio 57)

General Note

The following pages are found on Card 2:

36A
38A
40A
42A
42B
66A

[fol. 58] EXHIBIT 6, ANNEXED TO AFFIDAVIT OF WILLIAM P. JONES

Typewrite or print description of property in space provided

Sec. or Ward 1 Block 78 Lot No. 9.

Authorized person to whom tax, water frontage, and assessment bills are to be mailed

Name House Rent Acct 167 Street Bureau of Real Est.

City and Zone No. Rm. 1030 Municipal Bldg. NYC.

I hereby agree to notify the City Collector, Queens, of any change of address, ownership or Authorization to Agents.

Nov 3 1950.

[fol. 59] EXHIBIT 7, ANNEXED TO AFFIDAVIT OF WILLIAM P. JONES

Typewrite or print description of property in space provided,

Sec. or Ward 1 Block 78 Lot No. 9,

Authorized person to whom tax, water frontage and assessment bills are to be mailed:

Name Foreclosed by Action in Rem—Street T. V. 8-22-50,

I hereby agree to notify the City Collector, Queens, of any change of address, ownership or Authorization to Agents.

Nov 13, 1950.

[fol. 60] EXHIBIT 8, ANNEXED TO AFFIDAVIT OF WILLIAM P. JONES

Master tax sheet for Powell Street property.

(Photoprints.)

[*For the Convenience of Court and Counsel This Exhibit (Photostatic Copies) Is Bound in on the Opposite Page.*]

(Here follow 2 Photolithographs side folios 61, 61a)

General Note

The following pages are found on Card 2:

36A	42A
38A	42B
40A	66A

[fol. 62] EXHIBIT 9, ANNEXED TO AFFIDAVIT OF WILLIAM P. JONES

Excerpts From

"The Tax Foreclosure Procedure Problem—A Solution"

By

Arnold Frye

Chairman, Committee on Municipal Law, New York State Bar Association

* * * * *

Reprinted from the Proceedings of the New York State Conference of Mayors and Other Municipal Officials, Elmira, June 8-10, 1938

* * * * *

"* * * we come to the tax foreclosure bill. At the first meeting of the New York State Bar Committee in October of last year, the representatives of the State Conference who had been invited to be present, together with representatives of several state commissions, suggested that the Bar Committee could be of most assistance if it would aid in the drafting of a legislative bill establishing a less cumbersome and less expensive legal procedure for the foreclosure of municipal tax liens on real property. The problem had been considered for two years by a special committee of the State Conference having an able group of members under the Chairmanship of Mr. Levy of Freeport and had been discussed at the informal meetings of corporation counsel and other members of the Bar Association, held in January of 1936 and 1937. Between October and the beginning of the legislative ses-[fol. 63] sion, in a series of joint meetings of committees and sub-committees of the two groups, held at the City Bar Association or in the offices of the State Tax Commission, there was drafted a legislative bill, known as the Bulkley-Flynn Bill, which was discussed in addresses by the State Comptroller, the Comptroller of New York City and the State Tax Commissioner at a public meeting of

the Committee held at the time of the annual meeting of the Association in January of this year. The bill was introduced in both houses of the Legislature at the request of the State Tax Commission and was approved by the legislative committees of the State Conference and of the State Bar Association.

"Since 1900 there has been a trend of population away from the rural regions and smaller cities to the larger population centers, resulting in real estate speculations on a large scale, and a great many ill-advised real estate developments. In and near New York City there has been a trend toward the suburban counties and, with the stoppage of immigration, there has resulted the boarding up and virtual abandonment of a large number of old tenements. The wreckage has not been confined to the population centers. Due in part to abandonment of lands and to lack of rural planning, there is also a problem of rural tax delinquency.

"* * * The improved procedure is designed to put back on the tax rolls, uninhabited lands and vacant lots which for lack of a less expensive foreclosure procedure have too often been carried by municipalities to the advantage of speculators, but at the expense of the home owner. Taking [fol. 64] for convenience the recent report of the New Jersey State Planning Board as to rural tax delinquency in that state, it appears that of the total tax delinquent rural acreage in the state, 49% was forested while 68% was not farmed.

"Returning to urban regions, in one of the suburban counties in New York State many plots were given away in the Nineties with boxes of soap, have since been virtually abandoned and have paid no taxes. A recent report of the New York State Planning Council shows the extent to which the delinquent taxes arise from vacant lots in premature subdivisions. Of 179,000 vacant lots in such subdivisions in a portion of one county, nearly 100,000 have since been delinquent on taxes or assessments, in spite of the tremendous sums that were expended by municipalities for sewers, water-mains and streets. In the words of that report, 'On the basis of facts presented in Chapter 5 there is reason to believe that the owners of

these lands have long since forgotten that they ever owned them, * * *' Taxes continue to be levied on the inflated values of such lands, values which are but the ghosts of hopes long since dead. Meanwhile extravagant debts incurred for these premature subdivisions must be paid and the burden is shifted to the shoulders of the prudent tax payer. 'In other words, the tax payers in the remainder of the county * * * have been compelled over a term of years to assume for these vacant lands not only the increased costs of government due to their creation, but also the normal cost of general government, which were levied against them.'

[fol. 65] "* * * There are in New York State alone, literally a great many thousands of parcels of vacant lands and broken down improved properties which have been so long virtually abandoned by their owners, that the cost of the title searches alone would exceed the value. To get these properties back on the market or to enable the municipalities to use them for park or other public purposes, it is necessary to clear the titles by some inexpensive procedure. In the report of the New York State Planning Council above referred to, the following is given as typical of the title of many of such lands: '* * * that the owner of record died many years ago; that the executor of the estate completed the distribution of his property in compliance with the terms of his will and was duly discharged; that the will itself made no mention of the vacant lot in question and was drawn in such a way as to leave the lot in the status of intestate property; that the surviving heirs at law consist of fifteen grandchildren each of whom holds an undivided interest in the lot. What end of justice or of equity could possibly be served by a search of this title, in order that each of the heirs might be informed of his interest in a lot carried on the tax roll at a value of $5.00, against which the town holds a lien for unpaid penalties and taxes of $7.41, plus $27.63 in costs of search and notice.

"'The illustration sounds undelievably absurd, but it is hardly more absurd than the actual facts concerning thousands of vacant lots included in the count of properties in arrears in the course of this study.* * * Unless a

relatively inexpensive method can be devised for handling [fol. 66] these lands, which have to all intent and purposes been abandoned by the owners of record, the titles to large areas of land which lie beyond the limit of possible future urban growth, must remain so hopelessly muddled in perpetuity that they can never again be used for any purpose whatsoever.'

"That the same problem exists in New Jersey is evidenced by the 1938 report of the New Jersey State Planning Board. The report shows that in 1930 uncollected property taxes for that year plus uncollected property taxes and tax title liens of prior years amounted to 44.2% of the total property tax levy and by 1933, had risen to 92%. The report refers to the high cost of the existing foreclosure procedure and continues, 'For the state to spend from $200 to $400 to receive clear title to each plot of land worth less than $10 per acre on the average is patently impossible. * * * A suggested method for reducing the cost involved in barring the right of redemption * * * might be the adoption of the provisions of the Model Real Property Tax Collection Law, drawn by the National Municipal League, * * *.' The report then discusses the procedure in rem and prints as an appendix that part of the 'Model Tax Collection Law.'

"The special committee of the State Conference of Mayors had been studying the problem for more than two years, with the State Tax Commission, and had adopted in principle the suggestions of the Model Real Property Tax Collection Law referred to in the New Jersey report.

"In New York State, as in most states, there have long existed four principal procedures. A form of in rem procedure under which the state acquired much of the old [fol. 67] forest land in the Adirondacks and the Catskills. There has existed from early times, as in most states, the procedure by sale and the giving of a tax deed, after mere lapse of time—a procedure which is the harshest of all and which the courts have in consequence construed very technically, so that title companies generally do not insure such titles. The third procedure is by action to foreclose a mortgage; this is the procedure most widely followed, because the title is accepted by title companies, but the pro-

cedure is so cumbersome and so expensive that it is inapplicable in the large number of cases of unimproved or abandoned lands above referred to. There remains the procedure of suit on personal liability for collection of real property taxes—a procedure which can be effectively resorted to in only a limited number of cases.

* * * * *

"The committees, therefore, turned their attention, in the first instance, to the drafting of an in rem procedure, on the general lines of that set forth in the Model Tax Collection Law mentioned above. It was designed to meet the situation described above, of vacant lands or lands of low economic value, which have been virtually abandoned by their owners, or which were subject to accumulated taxes in excess of the land value. In order to provide an adequate procedure for foreclosure of taxes on improved lands or of current taxes on land of higher economic value, the committees decided to include in the bill the normal procedure of action to foreclose as to foreclose a mortgage, but for the benefit [fol. 68] of property owners and mortgagees, took the best provisions from existing tax acts, for the substantial reduction of the cumbersomeness and expense of such procedure.

"Before entering on a discussion of the bill itself, a word should be said as to its form. In view of the complication of the existing tax laws in the State, it was manifestly impossible to amend each of the special acts to secure a uniform foreclosure and it was thought advisable, as a matter of practical expediency, to attempt to make the bill mandatory. The two forms of procedure, action in rem and action as to foreclose a mortgage, are, therefore, made optional, either jointly or singly, at the will of the tax district.

"As the in rem procedure is the only part of the bill which may seem novel, this in rem procedure will be considered first, although it appears as Title 3 of the bill. As it was designed to clear the title of lands of low value or subject to heavy accumulations, it is confined to tax districts themselves and not extended to private owners of

tax liens although the United States Supreme Court has sustained a Nebraska statute which extended the in rem procedure to such private lien owners. Further, to limit its application to lands on which taxes have been allowed to accumulate, the in rem procedure is restricted to lands on which the tax district holds a lien at least four years old.

* * * * *

"The in rem procedure, thus briefly outlined, is limited to property on which a tax district has liens at least four years old. The other procedure provided by the bill, that [fol. 69] of action as to foreclose a mortgage, is intended to be the normal method applied to valuable improved property on which liens have not been accumulated.

* * * * *

"As to references, in addition to the provisions noted above, the bill provides as to the normal foreclosure action, that the court shall take proof of the facts and circumstances stated in the complaint and ascertain and determine the amount due without reference, unless the plaintiff apply for reference, in which event the fee of the referee shall not exceed $10. As to referees in the in rem procedure, the bill provides that any such action shall be given preference over all other causes and actions, and no such action shall be referred except to an official referee and the county court is given jurisdiction to make such reference.

"As to both forms of procedure, there are some common provisions. To keep down the cost, it has been noted that any number of parcels may be included and joined in one action, but in answering, the defendant has the absolute right of severance upon written demand filed with or made a part of his answer. Again, it is not necessary for the plaintiff to plead or prove the various steps, procedures and notices for the assessment and levy of the taxes and any defendant raising such an issue must particularly specify in his answer such irregularity and invalidity and must affirmatively establish such defense."

* * * * *

[fol. 70] EXHIBIT 10, ANNEXED TO AFFIDAVIT OF WILLIAM P. JONES

Memo re: Senate Int. 1582 Pr. 2773 By Mr. Stagg—
To amend the tax law in relation to the enforcement of the collection of delinquent taxes on real property.

The primary purpose of the bill is to provide a cheap and summary remedy for the foreclosure of municipally owned tax liens which are due and unpaid for a period of at least four (4) years from the date upon which the tax became a lien. The bill is the result of two years of joint effort of a committee consisting of representatives of the New York State Bar Association, the State Conference of Mayors, the State Tax Commission and the writer of this memorandum. The actual drafting of the bill was left to a subcommittee consisting of Mr. Arnold Frye, of Hawkins, Delafield and Longfellow, William A. Davidson, County Attorney of Westchester County, Mortimer Kassell, Counsel to the State Tax Commission, and myself.

As a result of a study of Philip Cornick of the Institute of Public Administration made for the State Planning Council in 1937 and 1938, it was learned that in the Cities of Rochester, Syracuse, Yonkers, Mount Vernon, and New Rochelle and forty-seven (47) of the sixty-two (62) towns in Erie, Monroe and Westchester Counties that of 293,000 vacant lots on the tax rolls 163,000 were in arrears of taxes; that the best part of them were in arrears in 1931 and that many of them had been in arrears as far back as 1917.

From the information obtained through the [fol. 71] Mayors Conference and the State Planning Council report it was learned that the condition described in the Counties and Cities above referred to was more or less of the condition prevailing in every village, city and county of the State. The Governor commented on the problem in his annual messages of 1938 and 1939 and suggested the passage of legislation to simplify the problem of tax lien foreclosure. Under existing conditions the titles to several hundreds of thousands of properties are hopelessly snarled and such lands cannot

be restored to the tax rolls because of the extremely high cost of tax lien foreclosure; under existing law, millions of dollars in taxes and hundreds of millions of dollars in assessed valuation are at stake.

This bill proposes to supply the remedy. It is divided into four titles. It is wholly optional and becomes operative only after a municipality elects by formal resolution to use its provisions.

Title 1 contains the definitions and method by which the election to use the bill must be exercised.

Title 2 is practically a re-enactement of existing 7A of the Tax Law. It provides the machinery for the foreclosure of a tax lien as though it were a mortgage. It contains, however, numerous procedural improvements designed to cut costs and strengthen title. The charges are based upon the practical experience of municipal lawyers who have foreclosed hundreds of tax liens and particularly Mr. Davidson, the County Attorney of Westchester County.

The provisions of this title are intended to be used against income producing property. The remedy is avail- [fol. 72] able to private as well as public tax lienors, after the expiration of the period of redemption.

Title 3 of the bill provides an entirely new procedure for tax lien foreclosure by an action in rem. Only a municipality may use this title and then only when the tax lien involved is four years old or more. The theory of the action is that the municipality shall proceed against the land and not the owner. No personal judgment can be obtained. The legal effect of the proceeding is to vest title in fee in the foreclosing tax district.

The procedure follows closely the procedure used in Western States, which the United States Supreme Court has held to constitute due process of law and to vest a good and marketable title in the foreclosing municipality (see *Leigh* v. *Green*, 193 U. S. 79, 48 L. Ed. 623; also *Winona and St. Paul Land Co.* v. *Minnesota*, 159 U. S. 537, 40 L. Ed. 247).

An analysis of the manner in which the procedure in rem under Title 3 would expedite and cheapen tax lien

foreclosure, let us say, in the County of Erie will best illustrate the desirability of this bill.

According to the State Planning Council report, there are some 88,000 parcels of land in Erie subject to foreclosure. Under existing law it would be necessary to search the title of each parcel of land involved, prepare individual notices of pendency of action, individual summonses and complaints, then serve each party in interest personally or by publication, then proceed to advertise the judgment of foreclosure and sale, have a referee to compute the costs and sell the property, and finally to [fol. 73] enter the judgment and convey the title to the purchaser. Placing the cost of foreclosure at the ridiculously low figure of $50.00 per parcel, it will be seen that the total cost will equal at least $4,400,000. The minimum time within which the action could be completed would be approximately one year. In many cases titles are so hopelessly beclouded, that years would pass before the ultimate vesting of title in the County.

Under the proposed in rem procedure the County proceeds directly against the land. No title search is necessary. The saving on this item alone would be a minimum of $1,000.00. All of the 88,000 parcels of land affected would be tabulated into a single list known as a "list of delinquent taxes". That list constitutes, as to each parcel of land, affected, an individual notice of pendency of action and separate summons and complaint. The saving in clerical work and in the preparation of papers is so apparent that no further comment need be made thereon.

No difficulty will be encountered in connection with service. The publication of a short form of notice similar to a complaint in a foreclosure action is constituted notice to all persons affected, of the commencement of the action, the nature of the proceeding and the requisites which must be complied with if the owner wishes to protect his equity in the property affected.

The rights of owners are further protected by providing that even though the redemption period has expired that the owner or mortgagee or any person having an interest in the land may redeem the same within the period set

forth in the notice. The owner or any person or any party in interest is given opportunity to contest [fol. 74] the action. If he fails to contest the municipality is entitled to proceed at once to final judgment. If an answer is submitted the act provides that it must be given preference over all other causes and the matter must be disposed of summarily. There is no long delay possible under this procedure. It is swift, summary and conclusive. The court is required to make a final judgment awarding the foreclosing tax district possession of the property after first making findings of fact with regard to the regularity of the tax sale and all of the proceedings relating thereto. The judgment directs the collecting officer of the tax district to prepare and execute the deed conveying title to the municipality, and upon execution of such deed, the municipality is vested with a title in fee simple absolute in such procedure, subject only to possible taxes of the other tax districts.

No referees are required to sell or compute. Each act required to be done must be done by a public officer of the municipality who receives no extra fee or compensation therefor.

The costs of the proceeding, per parcel involved, should not exceed a maximum of $5.00 per parcel as against a minimum of $50.00 per parcel under existing tax lien and foreclosure proceeding. On the one hand the costs would be $4,400,000, and under the proposed procedure would be $440,000, or a saving of $4,000,000.

Title 4 of the bill contains some 14 general provisions. This title (4) and Title 1 become effective by operation of law in any tax district which elects to adopt either title 2 or title 3 or both of the act. The more important general provisions are:

[fol. 75] Section 166a which permits tax districts owning liens on the same land to make agreements between themselves with regard to the disposition of such liens and the disposition of the proceeds of sale. This provision was inserted because of the great practical difficulties presently confronting over-lapping tax districts because of the lack of any statutory power for such district to treat their respective interests in the property in a sensible

businesslike manner. The agreement provision has worked admirably in Westchester County.

Section 166b enables a tax district lacking statutory authority to protect its tax liens in a proper case and if necessary enables it to provide funds therefor.

Section 166e enables owners, mortgagees, and lienors to register their names with the tax collector and to receive a notice of any tax sale or process affecting such person's property. This provision was inserted to protect the interest of owners and mortgagees and particularly the savings banks.

Section 166f makes it mandatory for municipalities to hold annual tax sales and provides that in the event that there is no bid or no legally acceptable bid that the tax district, by operation of law, becomes the owner of the lien. This provision prevents the disastrous results which follow from either the intentional or inadvertent failure of the collector to bid in property at a tax sale when there is no bid.

The third subdivision of the section will relieve municipalities of the unnecessary cost of re-offering municipally owned tax liens at subsequent tax sales and provides that [fol. 76] the tax district is deemed to have bid in such liens as though the same had actually been offered for sale. This provision has saved municipalities thousands of dollars in unnecessary advertising expenses.

Section 166j is an extremely important section. It provides that when a tax district acquires title through foreclosure under this bill, the land, unless used for other than a municipal purpose, is deemed to be held by the district for a public use for a period of two years from the judgment. This removes the great objection many districts have to foreclosure, namely, that they will be forced to pay taxes to overlapping districts on land which is non-productive. The municipality is given a reasonable time, two years, to dispose of the property. After that the land must be taxed. This will force municipalities to make a genuine effort to restore the land to the tax rolls as income producing property.

Section 166-l confers upon any tax district the statutory right to accept a deed from an owner of a lien in

Exhibit 5, Annexed to Affidavit of William P. Jones.

R-302-50

Section or Ward	Volume	Block	Lot No.	Location
31		78	9	

APPORTIONMENTS

DATE	
NUMBER	

THE CITY OF NEW YORK—DEPARTMENT OF FINANCE

BUREAU OF CITY COLLECTIONS

BOROUGH OF QUEENS

NOTE—ITEMS SOLD AT A TAX SALE ARE INDICATED BY A LETTER "S"—SEE REMARKS

FRONTAGE—ANNUAL WATER RATES

Amount Transferred (Memorandum for Office Use Only)	CHARGES Authority Number	CHARGES Annual Rate & Add'l Charges	CHARGES Date Billed Day	CHARGES Date Billed Month	LIQUIDATION Amount Paid or Cancelled	LIQUIDATION DATE Day	LIQUIDATION DATE Month	LIQUIDATION DATE Year	LIQUIDATION Cash Book No. and Folio or Order No.
				1948					
		L 41 00			41 00	7	50	11	98
				1949					
		L 41 00			41 00	7	6	51	11-93
				1950					
		L 41 00			41 00	7	6	51	11-98
				1951	13 21	7	6	51	39-218
					2 76	14	5	51	41--21
13 67		41 00			28 87	14	5	51	41--21
					12 13	7	6	51	39-218
				1952					
13 67		41 00			13 67 12 41 00 12	1 1	52 52	69--8 69--8	
				1953					
13 67		41 00			13 67 28 41 00 28	1 1	53 53	9--260 9--260	
				1954					
				1955					
				1956					
				1957					

CURRENT ANNUAL TAXES

ASSESSED VALUATION	AMOUNT OF TAX	First Half	Second Half	YEAR OF TAX
				1947/48
6000	183 60	91 80	91 80	ARREARS
				1948/49
6000	182 40	91 20 L	91 20	ARREARS
				1949/50
6000	181 20	90 60	90 60	ARREARS
				1950/51
6000	196 20	98 10	98 10	
				1951/52
6000	196 20	98 10	98 10	ARREARS
				1952/53
6000	206 40	103 20	103 20	
				1953/54
				1954/55
				1955/56
				1956/57

LIQUIDATION

FIRST HALF Amount Paid or Cancelled	FIRST HALF DATE Day	FIRST HALF DATE Month	FIRST HALF DATE Year	FIRST HALF Cash Book No. and Folio or Order No.	Discount on Second Half of Tax	SECOND HALF OR FULL YEAR Amount Paid or Cancelled	SECOND HALF OR FULL YEAR DATE Day	SECOND HALF OR FULL YEAR DATE Month	SECOND HALF OR FULL YEAR DATE Year	SECOND HALF OR FULL YEAR Cash Book No. and Folio or Order No.
91 80	31	10	47	50-126						
						91 80	27	4	48	73-206
91 20	3	11	48	1---58		91 20	7	6	51	1--198
90 60	2	11	49	50—21		90 60	1	5	50	75-297
98 10	31	10	50	98-120		~~90 10 6 5 51 36-178~~ 58 53 7 6 51 39-218 39 57 14 5 51 41--21				
98 10	13	10	51	47-250		98 10	24	4	52	86-236
103 20	30	9	52	91-163	07	103 13	19	3	53	15-246

ADDITIONAL LIQUIDATION

YEAR OF TAX	FIRST HALF Amount Paid or Cancelled	FIRST HALF DATE Day	FIRST HALF DATE Month	FIRST HALF DATE Year	FIRST HALF Cash Book No. and Folio or Order No.	Discount on Second Half of Tax	SECOND HALF Amount Paid or Cancelled	SECOND HALF DATE Day	SECOND HALF DATE Month	SECOND HALF DATE Year	SECOND HALF Cash Book No. and Folio or Order No.

AMOUNT TRANSFERRED (Memorandum for Office Use Only)

REMARKS

-L- LISTED, IN REM ACTION NO.1
SERIAL NO. 8
FILED WITH COUNTY CLERK MAY 22,1950

FORECLOSED BY ACTION IN REM-T.V.CITY OF NEW YORK 8/22/50

TREASURER S SEARCH NO 4575 DATED FEBRUARY 21ST 1951

APRIL 19 1951 PROPERTY CONVEYED TO JOHN BALOG 31/68 34TH ST L I CITY N Y FILE NO 101791

No Bills to be issued - See HAR

Exhibit 8, Annexed to Affidavit of William P. Jones.

THE CITY OF NEW YORK—DEPARTMENT OF FINANCE
BUREAU OF CITY COLLECTIONS
BORGUGH OF BROOKLYN

NOTE—ITEMS SOLD AT A TAX SALE ARE INDICATED BY A LETTER "S"—SEE REMARKS.

Section of Block	Volume	Block	Lot No.	Location
	32	5	3931	12 POWELL ST.

APPORTIONMENTS

Foreclosed by Action in Rem T. V. [illegible]

FRONTAGE — ANNUAL WATER RATES								CURRENT ANNUAL TAXES				LIQUIDATION							
	CHARGES				LIQUIDATION							FIRST HALF				SECOND HALF			
Amount Transferred	Arrears Charges	Annual Rate	Additional Charges	Date Sold by Dept.	Amount Due	Date by Dept.	Vol. Book No. of Sale	Assessed Valuation	Amount of Tax	Amount of Each Half	Year of Tax	Amount Due	Date by Dept.	Vol. Book No. of Sale	Charged to Account Real Est.	Amount Due	Date by Dept.	Vol. Book No. of Sale	
		271 50		1938	271 50	12 1 38	8-225	39000	1146 60	573 30	1938	573 30	28 4 38	30-100		573 30	25 10 38	58--11	
		271 50		1939	271 50	21 2 39	9--247	39000	961 60		1939 1st 6 Mos.	961 60	1 9 39	39--63					
		271 50		1940	271 50	26 1 40	26-287	39000	1150 50	575 25 575 25	1939-40	575 25	30 10 39	22--94		575 25	30 4 40	59-102	
	7618	271 50		1941	271 50	3 2 41	40--65	40000	1196 00	[illegible]	1940-41	598 00	1 11 40	16-266		598 00	1 5 41	54--76	
		271 50		1942	271 50	2 2 42	41--11	40000	1174 00	[illegible]	1941-42	592 00	30 10 41	23--39		592 00	2 5 42	56-247	
		271 50		1943	271 50	8 2 43	38-214	40000	1166 00	[illegible]	1942-43	594 00	2 11 42	28--99		594 00	1 5 43	55-197	
		271 50		1944	271 50	2 2 44	8--115	40000	1220 00	[illegible]	1943-44	610 00	3 11 43	90-212		610 00	1 5 44	17-109	
	L	271 50		1945				40000	1172 00	[illegible]	1944-45	586 00	3 11 44	38-281		586 00	1 5 45	51-295	
	L	271 50		1946				40000	1116 00	[illegible]	1945-46 ARREARS	558 00	1 11 45	64-161		558 00	20 4 46	79--80	
	L	271 50		1947				40000	1128 30	[illegible]	1946-47 ARREARS	564 00	31 10 46	2--295		564 00	1 5 47	36--44	

ADDITIONAL LIQUIDATION								
	FIRST HALF				SECOND HALF			
Year of Tax	Amount Due	Date by Dept.	Vol. Book No. of Sale	Charged to Account Real Est.	Amount Due	Date by Dept.	Vol. Book No. of Sale	

REMARKS

Listed, In Rem Action No. 4 Serial No. 287 Filed with County Clerk DEC 17 1951

No Bills to be issued

See [illegible]

Exhibit 8 Part I

R-283-50

Broken 1-1-51

Section or Ward	Volume	Block	Lot No.	Location
12	5	3831	12	POWELL ST.

Bills to be issued - Dec 1951

THE CITY OF NEW YORK—DEPARTMENT OF FINANCE
BUREAU OF CITY COLLECTIONS
BOROUGH OF BROOKLYN

NOTE—ITEMS SOLD AT A TAX SALE ARE INDICATED BY A LETTER "S"—SEE REMARKS

APPORTIONMENTS

DATE	NUMBER

Foreclosed by Action In Rem T. Y. MAY 19 1952 72528

FRONTAGE—ANNUAL WATER RATES CHARGES				LIQUIDATION				CURRENT ANNUAL TAXES					LIQUIDATION FIRST HALF				LIQUIDATION SECOND HALF OR FULL YEAR			
Amount Transferred (Memorandum for Office Use Only)	Authority Number	Annual Rate & Add'l Charges	Date Billed Day Month	Amount Paid or Cancelled	Date Day Month Year	Cash Book No. and Order or Order No.		Assessed Valuation	Amount of Tax	First Half	Second Half	Year of Tax	Amount Paid or Cancelled	Date Day Month Year	Cash Book No. and Order or Order No.		Amount Paid or Cancelled	Date Day Month Year	Cash Book No. and Order or Order No.	
		L 271 50	1948									1947/48								
		L 271 50	1949					46000	1384 60	692 30	692 30	ARR ARS	692 30	31 10 47	99-268		692 30	27 4 48	91-176	
		L 271 50	1950					46000	1380 00	690 00	L 690 00	1948/49 ARREARS	690 00	1 11 48	21-245					
SEWER RENT												1949/50								
L90 50		L 271 50	1951					46000	1380 00	690 00	690 00	ARREARS	690 00	NOV 1 49	14-253		690 00	1 5 50	34-262	
90 50		271 50	1952					46000	1490 40	745 20	XR 745 20	1950/51 ARRS	745 20	30 10 50	49-167		745 20	2 5 51	9-136	
90 50		271 50	1953					46000	1508 80	754 40	754 40	1951/52 ARREARS	754 40	1 11 51	22-124					
			1954					46000	1573 20	786 60	786 60	1952/53 ARREARS								
			1955									1953/54								
			1956									1954/55								
			1957									1955/56								
												1956/57								

ADDITIONAL LIQUIDATION

Amount Transferred (Memorandum for Office Use Only)	REMARKS	Year of Tax	FIRST HALF Amount Paid or Cancelled	Date Day Month Year	Cash Book No. and Order or Order No.	Discount on Second Half of Tax	SECOND HALF Amount Paid or Cancelled	Date Day Month Year	Cash Book No. and Order or Order No.
	Listed, In Rem Action No. 4 Serial No. 887 Filed with County Clerk DEC 17 1951								

Exhibit 8 Part I

61A

Exhibit 3, Annexed to Affidavit of William P. Jones. 36A

FIRST HALF DUE
OCT. 1, 1950
SECOND HALF DUE
APRIL 1, 1951

Form R171-D 390M
127026(50)

THE CITY OF NEW YORK—DEPARTMENT OF FINANCE

BUREAU OF CITY COLLECTIONS, BOROUGH HALL, KEW GARDENS 15, N. Y., PHONE BOulevard 8-5000

BILL FOR REAL ESTATE TAXES—LEVY FOR FISCAL YEAR JULY 1, 1950 TO JUNE 30, 1951

Be sure your address is on file at the CITY COLLECTOR'S OFFICE

TAX RATE FOR FISCAL YEAR 1950-51	
CITY and COUNTY PURPOSES	.0180352392
DEBT SERVICE	.0127552930
Total Rate for Local Purposes	.0307905322
BASIC TAX RATE .0308	
Assessment Rate for Special Improvements, Collectible with Tax	.0018706382
FULL TAX RATE .0327	.0326611704

PAY THE RIGHT BILL.

Compare your deed with the maps in the Tax Dept. to check property description shown hereon. If this bill does not affect your property, apply for a bill that does.

BOROUGH OF
QUEENS

1950-51

VALUATIONS CODED "E" are EXEMPT from TAXATION for LOCAL PURPOSES, but subject to ASSESSMENTS as ' above.

Date Bill Prepared		Prepared by		Interest Computed by	

PRESERVE THIS BILL. PRESENT IT WHEN PAYMENT IS MADE. IT IS FOR BOTH FIRST AND SECOND HALF OF TAX.

Sec. or Ward	Vol. (if any)	Block	Lot No.	Location
S1		78	9	45th Ave

ESTATE OF WILLIAM NELSON
36 W.44TH ST.
18 N.Y.CITY % C.CAMPBELL, TREAS

	Assessed Valuation (Code Exempt "E")	Amount of Tax	Division of Taxes: First Half of Tax Due October 1st	Division of Taxes: Second Half of Tax Due April 1st	Notice of Arrears as of June 30, 1950
	$6000	196 20	98 10	98 10	ARREARS
Interest on Tax					
Discount on Tax					
Total Am't Paid					

CASH PAYMENTS MUST BE MADE ONLY TO THE CASHIER AT HIS WINDOW. Such payments must be presented before 3 o'clock P.M., Saturdays 12 noon. When payment is made the Cashier receipts therefor by a STAMP in the space provided below. **PAY BY MAIL IF POSSIBLE.** Do not mail cash or postage stamps.

Make Checks, Drafts or Money Orders PAYABLE TO The CITY COLLECTOR.

If your property is registered in the Office of the CITY COLLECTOR, Borough Hall, Kew Gardens 15, N. Y., bills will be mailed in advance of due date. An owner or agent not receiving a tax, assessment or water bill by mail in due time, must apply for it.

The word **ARREARS** if it appears in the space indicated by the ARROW, means that, as of JUNE 30, 1950, previous TAXES, ASSESSMENTS or WATER CHARGES HAVE NOT BEEN RECORDED AS PAID. If these have not been paid since June 30, 1950, payment should be made IMMEDIATELY.

DISCOUNT

THE SECOND HALF OF THE TAX upon REAL ESTATE which is due on April 1, 1951 may be paid on October 1, 1950 or at any time thereafter provided that the first half is paid.

Upon such payment of the SECOND HALF a DISCOUNT will be allowed from the date of payment to April 1, 1951, at the rate of two per centum per annum.

INTEREST

INTEREST AT RATE OF SEVEN PER CENT. per annum will be charged on the FIRST HALF of the tax from October 1, 1950 to date of payment if not paid on or before October 31, 1950 and on the SECOND HALF of the Tax from April 1, 1951 to date of payment if not paid on or before April 30, 1951.

From the Administrative Code of the City of New York:

"Whenever any TAX or ASSESSMENT shall remain unpaid for THREE YEARS or any WATER RENT shall remain unpaid for FOUR YEARS the TAX LIEN on the PROPERTY will be SOLD to satisfy such ARREARS of TAXES, ASSESSMENTS or WATER RENTS up to a day to be named in the advertisement of sale as stated therein. The column for ARREARS indicates lots sold for ARREARS, or to be sold therefor; ARREARS to be paid and lots redeemed at the Office of the City Collector."

or WHENEVER ANY TAX, ASSESSMENT OR WATER RENT SHALL REMAIN UNPAID FOR FOUR YEARS, THE PROPERTY MAY BE FORECLOSED BY AN ACTION "IN REM".

For other information for TAXPAYERS see reverse side of this Bill.

RECORDED	Book	Folio
1st Half...	98	120
2nd Half...	36	171

RECEIPT—First Half of Tax HERE

RECEIPT—Second Half of Tax HERE

53

Form R171-D—3000M
200916(51)

FIRST HALF DUE
OCT. 1, 1951
SECOND HALF DUE
APRIL 1, 1952

PAY THE RIGHT BILL

Compare your deed with the maps in the Tax Dept. to check property description shown hereon. If this bill does not affect your property, apply for a bill that does.

THE CITY OF NEW YORK — DEPARTMENT OF FINANCE

BUREAU OF CITY COLLECTIONS, BOROUGH HALL, KEW GARDENS 15, N. Y., PHONE BOulevard 8-8000

BILL FOR REAL ESTATE TAXES—LEVY FOR FISCAL YEAR JULY 1, 1951 TO JUNE 30, 1952

Be sure your address is on file at the CITY COLLECTOR'S OFFICE

BOROUGH OF
QUEENS

1951-52

TAX RATE FOR FISCAL YEAR 1951-1952		
CITY and COUNTY PURPOSES		.0179619189
DEBT SERVICE		.0128291533
Total Rate for Local Purposes		.0307910722
BASIC TAX RATE	.0308	
*Assessment Rate for Special Improvements, Collectible with Tax		.0018090984
FULL TAX RATE	.0327	.0326001706
*PARTIAL TAX RATE	.0019	

VALUATIONS CODED "E" are EXEMPT from TAXATION for LOCAL PURPOSES, but subject to ASSESSMENTS as * above.

Date Bill Prepared		Prepared by		Interest Computed by	

PRESERVE THIS BILL. PRESENT IT WHEN PAYMENT IS MADE. IT IS FOR BOTH FIRST AND SECOND HALF OF TAX.

Sec. or Ward	Volume	Block	Lot No.
S1	78	9	[redacted]

ESTATE OF WILLIAM NELSON
36 WEST 44TH ST
NEW YORK 18 N Y

CASH PAYMENTS MUST BE MADE ONLY TO THE CASHIER AT HIS WINDOW. Such payments must be presented before 3 o'clock P.M., Saturdays 12 noon. When payment is made the Cashier receipts therefor by a STAMP in the space provided below. **PAY BY MAIL IF POSSIBLE.** Do not mail cash or postage stamps.

Assessed Valuation (Code Exempt "E")	Amount of Tax	Division of Taxes: First Half of Tax Due October 1st	Division of Taxes: Second Half of Tax Due April 1st	Notice of Arrears as of June 30, 1951
6000	196 20	98 10	98 10	ARS
Interest on Tax				
Discount on Tax				
Total Am't Paid				

Make Checks, Drafts or Money Orders PAYABLE TO The CITY COLLECTOR.

DISCOUNT

THE SECOND HALF OF THE TAX upon REAL ESTATE which is due on April 1, 1952 may be paid on October 1, 1951 or at any time thereafter provided that the first half is paid.

Upon such payment of the SECOND HALF a DISCOUNT will be allowed from the date of payment to April 1, 1952 at the rate of two per centum per annum.

INTEREST

INTEREST AT RATE OF SEVEN PER CENT. per annum will be charged on the FIRST HALF of the tax from October 1, 1951 to date of payment if not paid on or before October 31, 1951 and on the SECOND HALF of the Tax from April 1, 1952 to date of payment if not paid on or before April 30, 1952.

If your property is registered in the Office of the CITY COLLECTOR, Borough Hall, Kew Gardens 15, N. Y., bills will be mailed in advance of due date. An owner or agent not receiving a tax, assessment or water bill by mail in due time, must apply for it.

The word **ARREARS** if it appears in the space indicated by the ARROW, means that, as of JUNE 30, 1951, previous TAXES, ASSESSMENTS, SEWER RENTS or WATER CHARGES HAVE NOT BEEN RECORDED AS PAID. If these have not been paid since June 30, 1951, payment should be made IMMEDIATELY.

From the Administrative Code of the City of New York:

"Whenever any TAX or ASSESSMENT shall remain unpaid for THREE YEARS or any SEWER RENT or WATER RENT shall remain unpaid for FOUR YEARS the TAX LIEN on the PROPERTY will be SOLD to satisfy such ARREARS of TAXES, ASSESSMENTS, SEWER RENTS or WATER RENTS up to a day to be named in the advertisement of sale as stated therein. The column for ARREARS indicates lots sold for ARREARS, or to be sold therefor; ARREARS to be paid and lots redeemed at the Office of the City Collector."

or WHENEVER ANY TAX, ASSESSMENT, SEWER RENT OR WATER RENT SHALL REMAIN UNPAID FOR FOUR YEARS, THE PROPERTY MAY BE FORECLOSED BY AN ACTION "IN REM".

For other information for TAXPAYERS see reverse side of this Bill.

RECORDED	Book	Folio
1st Half	62	257
2nd Half		

RECEIPT—First Half of Tax HERE

RECEIPT—Second Half of Tax HERE

Exhibit 4, Annexed to Affidavit of William P. Jones.

38A

lieu of foreclosure. This is a sound practical provision which will result in a saving of hundreds of thousands of dollars. Owners frequently are willing to turn over a deed to the municipality but municipalities are reluctant to accept the same because of lack of statutory authority and the fear that they will not be able to insure the title. This section removes that objection.

I think that this is a sound workable bill and should be approved.

George Xanthaky.

[fol. 77] EXHIBIT 11, ANNEXED TO AFFIDAVIT OF WILLIAM P. JONES

"New York State Bar Association

Committee on State Legislation

1938

Bulletin No. 1

(pages) 11-12

No. 8

S., Pr. 1089, Int. 993—Mr. Buckley.

A., Pr. 1397, Int. 1277—Mr. Flynn.

'AN ACT to amend the tax law, in relation to the enforcement of the collection of delinquent taxes on real property, and repealing article seven-a thereof, relating thereto.'

This bill would amend the tax law by repealing article 7-a, as amended and substituting a new article to take effect December 1, 1938, consisting of Sections 161 to 166-j, which are carefully designed to permit any tax district, at its election, to adopt a simplified and less expensive procedure for the foreclosure of tax liens along the general lines of an action to foreclose a mortgage. The provisions limiting the expense have been adopted from the Westchester County Tax Act, where they have been

found convenient and effective. This procedure, in the event of its adoption, would apply to foreclosure actions not only by the tax district but to the actions of private purchasers of tax liens, and the economies of such procedure would be distinctly beneficial to the owners and mortgagees of the property.

[fol. 78] The bill would also permit any tax district, at its election, to adopt a still simpler and less expensive "in rem" procedure to foreclose liens held by such district where tax and assessment liens have accumulated for four years or more. This procedure is based on decisions of the United States Supreme Court which hold that similar summary procedure constitutes due process of law for collection of public charges. The bill does not permit the use of such procedure by private holders of tax liens.

By a number of studies recently made by competent authorities it has been established that a less complicated and expensive procedure for the foreclosure of accumulated tax liens has become a matter of urgent public necessity. In a recent study made for the State Planning Council in the cities of Rochester, Syracuse, Yonkers, Mt. Vernon, New Rochelle and in 47 of the 62 towns in Erie, Monroe and Westchester counties, it is shown that of 292,901 vacant lots and lands on the tax rolls, 162,771 are in arrears for taxes and assessments, that the greater part of these were already in arrears in 1931 and that many had been in arrears as far back as 1917. In many cases, the accumulated arrears are well in excess of the assessed valuations and unless a simplified and less expensive procedure is provided for the foreclosure of tax and assessment liens, the titles to several hundred thousand parcels of such lands cannot be cleared and the properties cannot be brought back on the market or on the tax rolls, because of the disproportionately high cost of the tax foreclosure procedure now provided by law.

This bill is effectively designed to remove this obstacle to the elimination of dead wood from the tax rolls and to [fol. 79] the re-habilitation of hopelessly clouded land titles, and without prejudicing any of the rights of owners.

The bill is approved."

Exhibit 12, Annexed to Affidavit of William P. Jones

The Committee on State Legislation of the Association of the Bar of the City of New York

Bulletin No. 204, 1939.

pages 505-508

• • • • •

"It would appear that an improved and less expensive procedure for the foreclosure of accumulated tax liens has become a public necessity. It has been found that in various tax districts in different parts of the State hundreds of thousands of vacant lots and lands on the tax rolls are in arrears for taxes and assessments; that these arrears run back for many, many years. In many cases the accumulated arrears are in excess of assessed valuations and unless some simplified procedure is provided for the foreclosure of tax and assessment liens, the titles to several hundred thousand parcels of such property cannot be cleared and such properties can not be brought back on the market or the tax rolls, in view of the disproportionately high cost of the present tax foreclosure procedure.

The bills seem to be effectively designed to eliminate dead wood from the tax rolls and rehabilitate hopelessly clouded land titles."

• • • • •

[fol. 80] EXHIBIT 13, ANNEXED TO AFFIDAVIT OF WILLIAM P. JONES

New York State Bar Association
Chartered 1876

Committee on Municipal Law
Arnold Frye, Chairman
49 Wall Street, New York City

May 17, 1939

Senate Int. 1582 Pr. 2773

An Act to amend the tax law, in relation to the collection of delinquent taxes on real property, and repealing article seven-a thereof, relating thereto.

Hon. Nathan Sobel,
Counsel to the Governor,
Executive Chamber,
Albany, New York.

My dear Mr. Sobel:

As requested, I enclose herewith a memorandum on behalf of the Committee on Municipal Law of the State Bar Association.

Very truly yours, Arnold Frye, Chairman.

AF c, Enc.

[fol. 81] New York State Bar Association
Chartered 1876

Committee on Municipal Law
Arnold Frye, Chairman
49 Wall Street, New York City

Memorandum re:

Senate Int. 1582 Pr. 2773

Introduced by Sen. Stagg and by Mr. Whitney.

An Act to amend the tax law, in relation to the collection of delinquent taxes on real property, and repealing article seven-a thereof, relating thereto.

This statement is submitted on behalf of the Committee on Municipal Law of the State Bar Association.

The above bill was introduced in the Senate on March

20th by Senator Stagg, chairman of the Committee on Taxation and Retrenchment and was introduced in the Assembly on March 21st by Mr. Whitney, chairman of the Committee on Taxation, by request of the Department of Taxation and Finance.

The bill as introduced was almost identical with the bill introduced last year by Senator Buckley (Int. 993 Pr. 1089, Feb. 14, 1938) and in the Assembly by Mr. Flynn (Int. 1277 Pr. 1397, Feb. 14, 1938) which bill passed the Senate, but failed of passage in the Assembly during the closing days of the session. Because of the late date of introduction of the bill this year, the Committee on State Legislation, which is the only Committee authorized to speak on behalf of the entire Bar Association, has not [fol. 82] made a formal report on this year's bill, but because of the similarity of the two bills, William J. O'Shea, chairman of that Committee has authorized us to call your attention to their printed memorandum relative to the Buckley-Flynn bill and a copy of that memorandum is attached hereto (Bulletin No. 1, 1938, at page 11).

As compared with the Buckley-Flynn bill, the changes which appear in the Stagg-Whitney bill as it passed the Legislature do not greatly impair its usefulness to the tax districts of the State as a whole. The important changes were made at a hearing before the Assembly Committee on Taxation on April 18th, at the instance of representatives of Nassau County. The bill had provided, in effect, that the tax liens of different tax districts on the same parcel of property accruing in the same calendar year should rank in parity with one another. This was an attempt to effect a partial settlement of the vexed question of parity or priority as between liens of different tax districts on the same parcel of property. This provision was stricken out and changes with the same object were made in some other provisions, so that the bill as passed does not attempt to regulate the question of parity or priority,—in fact, Section 166 provides: "In tax districts in which the provisions of this title become effective, tax liens shall rank in priority as may now, or as may hereafter, be provided by law." After the bill passed the Senate on April 28, and the

Assembly on May 3, it was recalled for reconsideration by the Senate and was amended to omit the provision which would have permitted municipalities to register titles (to lands taken on foreclosure of liens) under the [fol. 83] title registration (Torrens) provisions of the Real Property Law. The bill was also amended to insert a provision relative to the publication of notices in certain newspapers in New York and Bronx counties.

These amendments do not materially affect the main objects of the bill. This Committee, therefore, approves the bill and recommends its enactment.

The principal features of the bill are discussed in an attached printed copy of an address reprinted from the 1938 proceedings of The State Conference of Mayors.

The reasons which led this Committee to take part in the preparation of the bill are stated in that address and in the attached printed copy of the report of this Committee to the State Bar Association as of December 15, 1938. Briefly, when the Committee on Municipal Law was formed, it met in October, 1935, with officers of the State Department of Taxation and Finance, of The State Conference of Mayors and of other associations of county and municipal officers and was advised that the Committee would be rendering a useful public service if it would assist in drafting a simpler and less expensive legal procedure for the foreclosure of municipal tax liens on real property. As a result, the Buckley-Flynn bill was drafted in a series of meetings held jointly with representatives of other organizations. The Committee owes much to the members, and to the counsel of the State Tax Commission, and particularly to the President of the Commission, the Hon. Mark Graves.

Among other lawyers, who were not members of this Committee but gave much time or made valuable suggestions, were Samuel M. Levy, Chairman of the Special [fol. 84] Committee of The State Conference of Mayors, and Charles W. Miller, Fred N. Oliver and E. Henry Powell of the Savings Bank Trust Company and the Association Savings Banks of State of New York. The Committee is also happy to acknowledge its obligation to

George Xanthaky who had a large share in the preparation and drafting of the bill.

Respectfully submitted, Arnold Frye, Chairman of the Committee.

EXHIBIT 14, ANNEXED TO AFFIDAVIT OF WILLIAM P. JONES

Thirtieth Annual Conference Niagara Falls, 1939

Conference of Mayors

and

Other Municipal Officials
of the State of New York

Office of the Executive Secretary
City Hall, Albany, N. Y.

Dial 3-4111

May 15, 1939

Memorandum

Senate Bill Intro. 1582, Print 2773 by Mr. Stagg

To amend the tax law in relation to the enforcement of the collection of delinquent taxes on real property.

The general legislative committee of the New York State [fol. 85] Conference of Mayors and Other Municipal Officials has approved this bill and it concurs in the memorandum filed with you by Hon. George Xanthaky, Councilman, Long Beach, N. Y.

W. P. Capes, Executive Secretary.

WPC:KMH

EXHIBIT 15, ANNEXED TO AFFIDAVIT OF WILLIAM P. JONES

State of New York
Department of
Taxation and Finance
Albany

May 26, 1939

Hon. Herbert E. Lehman
Governor of New York
Executive Chamber
Albany, New York

In re: Senate bill, Intro. No. 1582, Pr. No. 2773

My dear Governor:

The above bill is in your hands for action. It amends the Tax Law by repealing Article 7-A and substituting a new article bearing the same number, to take effect October 1, 1939.

This bill was prepared jointly by the State Tax Commis-
[fol. 86] sion and by the Committee on Municipal Law of the State Bar Association, after close study of the Cornick Report, which you will recall was related to a study made by the State Planning Council.

The bill consists of sections 161 to 166-l, comprised of four titles, as follows:

Title 1, section 161, prescribes a short title, "uniform delinquent tax enforcement act," and defines tax district, collecting officer, tax lien and tax sale. Section 162 provides that any tax district may, notwithstanding the provisions of any general, special or local law, elect either title 2 or title 3 of Article 7-A, or both, such election to be evidenced by adoption of a resolution in substantially the form prescribed in the bill. If either title 2 or title 3 is so adopted, or if both are adopted, then titles 1 and 4 are made applicable to such tax district. After one year from the date of adoption of such resolution, any taxing district may rescind such election, in

which event the provisions of the laws in force therein prior to such election shall again become applicable to such district.

Title 2 provides for foreclosure of a tax lien as in an action to foreclose a mortgage. Section 163 requires a notice to redeem before the institution of an action to foreclose. The section prescribes the contents of such notice. Section 163-a fixes the amounts which shall be paid on redemption. Section 163-b permits the owner of a tax lien, whether a private purchaser or a tax district, to complete the purchase and take a conveyance or to foreclose the tax lien if the same is not re- [fol. 87] deemed. Section 164 prescribes the procedure which is taken from laws now in force in some parts of the State and would have the effect of reducing the expense and the complications of the procedure which is commonly employed.

Title 3, comprised of sections 165 to 165-h, provides a procedure for foreclosure of the tax lien by "action in rem." This procedure is not made available to private purchasers of liens and is limited to actions by a tax district which owns a tax or assessment lien which has been due and unpaid for the period of four years from the date on which the tax, assessment or other legal charge became a lien. The action is begun by the filing in the office of the clerk of the county of a list or lists of such delinquent taxes held and owned by such tax district. Notice must be given of such filing in a form prescribed by the bill. A verified answer may be filed on behalf of any interested person within the period stated in the notice and the court may order a sale of the property. The action terminates in a judgment.

Title 4, comprised of sections 166 to 166-l, covers general provisions which are applicable if either title 2 or title 3, or both, have been adopted by the tax district.

The effect of the bill will be to permit any tax district to adopt a simplified and less expensive procedure for the foreclosure of liens along the general lines of an action to foreclose a mortgage. The provisions limiting the expense have been taken from the Westchester County Tax Act and have been found workable in that county,

[fol. 88] so that there would seem to be no valid objection. This procedure, in the event of its adoption, would govern the foreclosure actions of private purchasers of tax liens, some of whom are referred to as "tax sharks" and would be distinctly beneficial to the owners and mortgagees of the property.

The effect of the bill will also be to permit any tax district to adopt the still simpler and less expensive "in rem" procedure to foreclose liens held by the district where tax and assessment liens have accumulated for four years or more. This procedure is drawn from decisions of the United States Supreme Court, which held that similar summary procedure constitutes due process of law for collection of public charges.

By a number of studies recently made by very competent authorities it has been established that a less complicated and expensive procedure for the foreclosure of accumulated tax liens has become a matter of public policy, even of public necessity. In a recent study made for the State Planning Council in the cities of Rochester, Syracuse, Yonkers, Mount Vernon, New Rochelle and in forty-seven of the sixty towns in Erie, Monroe and Westchester Counties, it is shown that of 292,901 vacant lots and lands on the tax rolls, 162,771 are in arrears for taxes and assessments, that the greater part of these were already in arrears in 1931 and that many had been in arrears as far back as 1917. These vacant lots are largely to be found in broken down real estate developments and are referred to by dealers in real estate as "blighted areas." In many cases, the accumulated arrears are well in excess of the assessed valuations, and [fol. 89] unless a simplified and less expensive procedure is provided for the foreclosure of tax and assessment liens, the titles to several hundred thousand parcels of such lands cannot be cleared and the properties cannot be brought back on the market or on the tax rolls, because of the disproportionately high cost of the tax foreclosure procedure now provided by law.

This bill is effectively designed to remove this obstacle to the elimination of dead wood from the tax rolls and to the rehabilitation of hopelessly clouded land titles.

I strongly urge that this bill receive executive approval.

Very truly yours, Mark Graves, Commissioner of Taxation and Finance.

[fol. 90]

SUPREME COURT OF NEW YORK, COUNTY OF QUEENS

In the Matter of the Foreclosure of Tax Liens Pursuant to Title D of Chapter 17 of the Administrative Code of the City of New York, List of Delinquent Taxes, Sections 1 and 2, Borough of Queens, Action No. 1 (Serial No. 83, Section 1, Block 78, Lot 9).

NOTICE OF MOTION IN ACTION NO. 1 FOR RELIEF FROM DEFAULT JUDGMENT

Sirs:

Please take notice that upon the annexed affidavit of Gerald D. Nelson, sworn to the 16th day of March, 1954, the annexed affidavit of William P. Jones, sworn to the 16th day of March, 1954, and upon all the proceedings heretofore had herein, a motion in conjunction with the annexed foregoing motion and likewise directed to the Court's discretion, will be made at Special Term, Part I of the New York Supreme Court to be held in and for the County of Kings in Room 1100-H, Municipal Building, Borough of Brooklyn, on the 31 day of March, 1954, at the opening of Court on that day, or as soon thereafter as counsel can be heard, for an order pursuant to § 108, Civil Practice Act, relieving the defendants, the foreclosed owners of the fee title to that certain parcel, designated in the above action as Serial No. 83, Section 1, Block 78, Lot 9—and known as 21-17—45th Avenue, Long Island City—from the default judgment of foreclosure in rem entered in said action on August 22, 1950, and per-

[fol. 91] mitting the defendants to redeem the aforesaid parcel (or the proceeds received by the City of New York from the sale thereof) by payment of all tax liens with interest, if any such exist, or permitting defendants to answer in the above-entitled action upon the following grounds: (1) that the default judgment herein was taken

against defendants through their mistake, inadvertence, surprise or excusable neglect, (2) that the City failed to comply with Title D of Chapter 17 of the Administrative Code of the City of New York, (3) that the application by the City of New York of Title D of Chapter 17 of the Administrative Code for collection of tax liens on defendants' property, under all the circumstances of this case, violates defendants' rights as guaranteed by the Constitutions of the United States and of the State of New York, and for such other, further and different relief as to the Court seems just and proper.

Please take further notice that all papers in opposition hereto are required to be served five days before the return day of this motion.

Dated: New York, N. Y.

March 16, 1954.

Yours, etc., Perkins, Malone & Washburn, Attorneys for Defendants, the Foreclosed Owners, Office and P. O. Address, 36 West 44th Street, New York 36, N. Y.

[fol. 92] To:

Adrian P. Burke, Esq., Corporation Counsel, Municipal Building, Borough of Manhattan, City of New York.

AFFIDAVIT OF GERALD D. NELSON, READ IN SUPPORT OF MOTION IN ACTION No. 1

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

Gerald D. Nelson, being duly sworn, deposes and says that he, Geraldine D. N. Acker and Gertrude N. Fitzpatrick are the duly appointed successor-trustees under the Will of William Nelson, deceased, who died a resident of the City, County and State of New York, April 3, 1905, and with Helen D. Moller, individually, are the foreclosed owners of that certain parcel of real estate

known as 21-17—45th Avenue, Long Island City, Borough of Queens, and designated in the above action as Serial No. 83, Section 1, Block 78, Lot 9, that the above-named persons now reside and at all times material herein have resided respectively at 210 Elm Road, Princeton, New [fol. 93] Jersey, "Spring Gables", Poughkeepsie, New York, and "Springside", Poughkeepsie, New York, that he is fully familiar with this application and makes this affidavit in support of defendants' motion to be relieved of the default judgment herein.

1. The foregoing foreclosed owners are the same persons named as defendants and foreclosed owners in the accompanying motion in the Kings County foreclosure action.

2. All the facts set forth in deponent's affidavit supporting the accompanying motion in the Kings County action are material and pertinent here and the same are reiterated by reference in support of this application as though fully set forth herein.

3. Additional facts specifically affecting the 45th Avenue property are set forth below.

4. Defendants acquired the fee simple title to the 45th Avenue property December 21, 1938 by foreclosure of the first mortgage thereon, theretofore held by them and their predecessors as one of the assets of their trust. After that date defendants managed the 45th Avenue property as owners as in the case of the Powell Street property.

5. The 45th Avenue property consists of a four story house of brick and stone construction, which defendants' tenant operated as a rooming house. The building oc- [fol. 94] cupies a plot 100 feet deep fronting 20 feet on the north side of 45th Avenue. Three views of the property are affixed opposite:

(Here follows 1 Photolithograph, side folio 94a)

General Note

The following pages are found on Card 2:

36A	42A
38A	42B
40A	66A

[fol. 95] 5. A tabulation of data affecting the 45th Avenue property is set forth below:

[Folio 95]

	Real Estate Taxes			Assessed Valuation
1951/2	Second half	$98.10	Paid)	$6,000.00
	First half	98.10	Paid)*	
1950/1	Second half	98.10	Paid)	6,000.00
	First half	98.10	Paid)	
1949/50	Second half	90.60	Paid	6,000.00
	First half	90.60	Paid	
1948/9	Second half	91.20	Unpaid	6,000.00
	First half	91.20	Paid	
1947/8	Second half	91.80	Paid	6,000.00
	First half	91.80	Paid	
1946/7	Second half	85.80	Paid	6,000.00
	First half	85.80	Paid	
1945/6	Second half	84.60	Paid	6,000.00
	First half	84.60	Paid	
1944/5	Second half	87.90	Paid	6,000.00
	First half	87.90	Paid	
1943/4	Second half	109.55	Paid	7,000.00
	First half	109.55	Paid	
1942/3	Second half	109.90	Paid	7,000.00
	First half	109.90	Paid	
1941/2	Second half	108.15	Paid	7,000.00
	First half	108.15	Paid	
1940/41	Second half	110.25	Paid	7,000.00
	First half	110.25	Paid	
1939/40	Second half	106.40	Paid	7,000.00
	First half	106.40	Paid	
1939	First	104.30	Paid	7,000.00

The above items are taken from receipted tax bills in defendants' possession and cover the full period of defendants' ownership.

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* These items were paid in response to tax bills improperly sent to defendants by the City for two years after the City purported to take title and even after it had sold the property to a third person. The effect of this wrongful action on the part of the City as it contributed to the loss of the Powell Street property is treated in detail in the affidavits supporting the accompanying motion.

[fol. 96]

	Water Charge		Other Assessment	
1950	$41.00	Unpaid		
1949	41.00	Unpaid		
1948	41.00	Unpaid		
1947	41.00	Unpaid		
1946	41.00	Unpaid		
1945	24.00	Unpaid		
1944	24.00	Paid		
1943	24.00	Paid		
1942	24.00	Paid		
1941	24.00	Paid		
1940	21.00	Paid	1.50	Paid
1939	21.00	Paid		

The above items are taken from receipted bills of the City of New York in defendants' possession and cover the full period of defendants' ownership.

	Gross Rents	All Expenses Including Real Estate Taxes and Water Charges but excluding depreciation	Net Income
1950	$520.00 (Rent collected for 1st 8 mos. only)	$248.22	$271.78
1949	780.00	231.80	548.20
1948	780.00	211.42	568.58
1947	780.00	193.39	586.61
1946	780.00	238.24	541.76
1945	780.00	202.79	577.21
1944	780.00	242.59	537.41
1943	780.00	293.23	486.77
1942	780.00	307.69	472.31
1941	780.00	261.62	518.38
1940	780.00	283.24	496.76
1939	355.00	268.00	87.00

6. From the time defendants acquired the 45th Avenue property it has been continuously and fully rented and has yielded a reasonable return on investment. Deponent, considering it a valuable asset of the trust, carried on a [fol. 97] systematic and regular program of maintenance and repair.

7. Until deponent discovered his bookkeeper's defalcations in November 1952, he believed that all charges against the 45th Avenue property had been paid and were regularly being paid. Defendants at all times had idle funds in the bank equal to many times the amount of the small unpaid water charges. The loss of the 45th Avenue property came as a complete surprise and without any actual notice to deponent.

8. The action against the 45th Avenue property was commenced May 22, 1950; at that time only $72.50 of water charges were four years in arrears. The City purported to take title on August 22, 1950 and on February 21, 1951 sold the property to one John Balog for $7,000, retaining the entire proceeds.

9. In view of the fact that title has passed to a third person, defendants seek the difference between the sale price ($7,000) and all charges justly due the City.

Wherefore, defendants pray that their motion be granted.

Gerald D. Nelson.

(Sworn to March 16, 1954.)

[fol. 98] AFFIDAVIT OF WILLIAM P. JONES, READ IN SUPPORT OF MOTION IN ACTION NO. 1

STATE OF NEW YORK,
County of New York, ss.:

William P. Jones, being duly sworn, deposes and says that he is an attorney of the State of New York, a member of the firm of Perkins, Malone & Washburn, attorneys for the defendants, the foreclosed owners herein, and that he is fully familiar with this application and with all prior proceedings herein, and he makes this affidavit in support of defendants' motion pursuant to § 108, Civil Practice Act, for relief from the default judgment entered in this action.

1. This motion in a foreclosure in rem action commenced in adjoining Queens County is brought here pursuant to Rule 63(1) R. C. P. in conjunction with the annexed motion for similar relief in the Kings County foreclosure action because the loss of the two properties owned by the same defendants arises from one set of circumstances, and because certain acts of the City in respect to the Queens County 45th Avenue property directly contributed to the loss of the Kings County Powell Street property. There being such interdependence between the two mo-

tions this Court in the interest of justice and convenience is urged to consider them together.

2. All the facts in connection with the 45th Avenue [fol. 99] property and its foreclosure in rem by the City as contained in deponent's affidavit in the Kings County action are material to this motion and are herein incorporated by reference in support hereof. In like manner the aforesaid facts, together with the exhibits annexed to the aforesaid affidavit support the grounds upon which this motion is made.

3. While it might be impracticable to reinvest defendants with title to the 45th Avenue property—title now being in a third person—the proceeds of the sale are held by the City and are subject to equitable disposition by this Court, and it would seem, if defendants are permitted to answer herein, that appropriate relief could be obtained consistent with § D17-12.0 of the Code which among other things provides:

> "The Court shall have full power * * * in a proper case to direct a sale of such lands and the distribution or other disposition of the proceeds of the sale."

Wherefore, deponent prays that defendants' motion for relief from the default judgment herein be granted and that defendants have such other, further and different relief as to the Court seems just and proper.

William P. Jones.

(Sworn to March 16, 1954.)

[fol. 100] SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF KINGS.

In the Matter

of the

Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York

List of Delinquent Taxes

Sections 10, 11, 12 and 13
Borough of Brooklyn

Action No. 4, Serial No. 887
Section 12, Block 3831, Lot 12

Affidavit of Joseph Brandwen, Read in Opposition to Motion in Action No. 4.

STATE OF NEW YORK,
County of New York, ss:

Joseph Brandwen, being duly sworn deposes and says:

1. I am an Assistant Corporation Counsel of the City of New York, in charge of the within motion and fully familiar with all the facts and circumstances hereinafter set forth.

2. This affidavit is submitted in opposition to the motion now being made by the foreclosed owners, the Trustees under the Will of William Nelson, for an order (1) relieving them from a default judgment entered against property owned by them and (2) permitting [fol. 101] them to redeem by the payment of all delinquent tax liens with interest, or to interpose an answer in the above-entitled foreclosure action. The motion is based upon the following grounds:

(a) That the judgment of foreclosure was entered herein after a default by the foreclosed owners occasioned by their mistake, inadvertence, surprise or excusable neglect, to which The City of New York itself wrongfully contributed and is hereby estopped to assert such default;

(b) That The City of New York failed to comply with Title D of Chapter 17 of the Administrative Code of The City of New York (the in rem tax lien foreclosure statute); and

(c) That the application by The City of New York of Title D of Chapter 17 of the Administrative Code to the foreclosed owner's property, under all the circumstances of this case, violates their rights as guaranteed by the Constitutions of the United States of America and the State of New York.

These identical reasons were asserted unsuccessfully in a previous action brought by the foreclosed owners against The City of New York as will be noted hereafter.

The foreclosure in Rem of the Powell Street Property in Kings County and the Property Known as 21-11 45th Avenue, Long Island City, in Queens County.

3. On December 17, 1951, the City, pursuant to the [fol. 102] Administrative Code of The City of New York, Chapter 17, Title D, commenced an action in rem to foreclose all tax liens held and owned by it which were liens for four years or more on properties located in Sections 10, 11, 12 and 13 of the Borough of Brooklyn. On that date the City filed a List of Delinquent Taxes in the office of the Clerk of the County of Kings. Included in the list, together with 1703 others, were the premises designated on the Tax Map for The City of New York for the Borough of Brooklyn as Section 12, Block 3831, Lot 12 (Serial No. 887) hereinafter designated as the "Powell Street property". The tax liens which had accrued against this property were water charges which had become liens for the years from 1945 to 1951, inclusive, and the real estate taxes which had become liens for the second half of the tax year 1948-49.

4. The City duly complied with the jurisdictional provisions of the Administrative Code, Sections D17-5.0 and 6.0, requiring the filing of the List of Delinquent

Taxes and the posting and publication of the notice of foreclosure. In addition, the City complied with the requirement of the Administrative Code, Section D17-6.0 for mailing of the notice "to the last known address of each owner of property affected" by the List "as the same appears upon the records in the office of the City Treasurer" when it directed such notice to "Est. William Nelson, 36 West 44th Street, New York 18, N. Y." This was the address of the office maintained by the foreclosed owners and supplied by the owners to the City Treasurer.

[fol. 103] 5. The foreclosed owners failed to redeem prior to the last date fixed for redemption and never interposed an answer in the foreclosure action.

6. On May 19, 1952, the Supreme Court of the County of Kings entered a judgment of foreclosure which directed the Treasurer of The City of New York to execute and deliver a deed conveying this property, as well as 962 others, to the City in fee simple absolute. Pursuant to said judgment a deed to said premises was executed on May 19, 1952, and title vested in the City. The City went into possession of the property and is still the owner of record and in possession. This Court in its decision made by Mr. Justice Charles N. Cohen, found as a fact that the City had duly complied with all the requirements of the Administrative Code and that all proceedings in the foreclosure action were regular and in accordance with the statute, as appears from the judgment roll filed in this action.

7. Similar to the case of the Brooklyn properties above mentioned, on May 22, 1950, the City, pursuant to the Administrative Code of The City of New York, Chapter 17, Title D. commenced an action in rem to foreclose all tax liens held and owned by it, which were liens for four years or more, on properties located in Sections 1 and 2 of the Borough of Queens. On that date the City filed a List of Delinquent Taxes in the office of the Clerk of the County of Queens, and included in the list, with 294 others, were the premises described as Section 1, Block 78, Lot 9, Serial No. 83, hereinafter [fol. 104] known as the "45th Avenue Property". The

tax liens which had accrued against this property were the water charges which had become liens for the years from 1945 to 1950, inclusive, and the real estate taxes which had become liens for the second half of the tax year 1948-49.

8. The facts as to the acquisition of jurisdiction by the Supreme Court, Queens County, over this property by filing of the List, publication, posting and mailing of the notice of foreclosure, are precisely the same as related above with respect to the Powell Street property. Furthermore, as in the case of the Powell Street property, the foreclosed owners failed to redeem or interpose an answer with respect to the 45th Avenue Property.

9. In due course, the Supreme Court of the County of Queens, by Mr. Justice Swezey, found as a fact that the City had duly complied with all the requirements of the Administrative Code. A judgment of foreclosure was entered which directed the Treasurer of The City of New York to execute and deliver a deed conveying this property, as well as 179 others, to The City of New York in fee simple absolute. Pursuant to the judgment, a deed to said premises was executed on August 22, 1950 and title vested in the City. On February 21, 1951, the City sold this property at public auction to one John Balog for $7,000.00.

10. The foreclosed owners admit that with respect to these properties The City of New York mailed a public [fol. 105] notice of foreclosure to the office maintained by them since April, 1940 and that it was received by their duly authorized agent.

Prior Action by the Foreclosed Owners to Recover Their Properties

11. On February 4, 1953, more than two years and five months after the City had acquired the 45th Avenue property, and almost two years after the City had sold it to Balog, the foreclosed owners and delinquent trustees commenced an action in the Supreme Court, pursuant to Article 15 of the Real Property Law (a) to cancel the deed conveying title to the Powell Street

property to The City of New York, and (b) to recover from the City a money judgment for $6,435.10 which they claimed is the difference between the taxes due to the City on the 45th Avenue property and the amount for which the City had sold the premises to Balog. Evidently, the foreclosed owners were advised to bring this type of action instead of proceeding to open their defaults in the in rem foreclosure actions in order to circumvent both the statute and the decisions of this Court which have denied to foreclosed owners the right to open their defaults both in redemption and pleading after the last days set therefor.

12. In the action brought to determine claim to real property brought by the Trustees, four causes of action were alleged in their complaint, which may be summarized as follows:

(a) After identifying the plaintiffs and alleging how the Powell Street property was acquired by [fol. 106] them, it was alleged that the City failed to comply with the provisions of Title D of Chapter 17 of the Administrative Code of The City of New York, and therefore, the judgment and deed purporting to convey title to the Powell Street property were nullities;

(b) The second cause of action alleged that in November, 1952 the Trustees discovered that their trusted employee had for a number of years been defrauding them and converting their property to his use. They admitted that the in rem foreclosure notices which had been correctly addressed to the estate at their office were received but concealed from them by this employee. He also concealed from them the City's water bills on the Powell Street property and the fact that they had not been paid. It was further alleged that in November 1952, six months after the City had taken title to the Powell Street property, the foreclosed owners' attorney wrote to the Corporation Counsel, informing him of their discovery of their employee's actions and that they were taking steps to recover that property. The foreclosed owners claimed that they should be permitted

to pay the tax arrears in view of the fact that the value of the property far exceeded the taxes due and that if this were denied them the taking of the property would amount to a confiscation of their property. They further alleged that their regularity of payment, except for the lapses which made the property eligible for foreclosure, should have [fol. 107] placed the City on notice of their good faith and intent to pay the taxes. It was finally alleged that the City's actions amounted to expropriation and that it intended not the collection of the taxes but the seizure of the properties.

(c) The third cause of action alleged that when the foreclosure actions were commenced there was available to The City a procedure for collecting tax liens under the Administrative Code, Chapter 17, Title A, Section 415 (1)-23.0—Section 415 (1)-53.0. Had the procedure of a sale of a transfer of tax lien been employed, it was claimed, the City would have been certain to collect its taxes and the foreclosed owners' right of redemption would have been preserved. The use of the foreclosure method of enforcement instead of sale of a transfer of tax lien, they asserted, was an abuse of the purpose of the in rem foreclosure statute, was contrary to the legislative intent and a violation of the Trustees' constitutional rights;

(d) The fourth cause of action sought to recover the purchase price of the 45th Avenue property received by The City of New York, less any unpaid taxes due on said property. In all other respects the nature of this cause of action was substantially the same as the other and preceding causes of action.

13. The foreclosed owners then demanded judgment on the first and third causes of action, setting aside and cancelling of record the deed to the Powell Street prop- [fol. 108] erty or, in the alternative, upon the second cause of action, that this Court exercise its discretion in equity to set aside and cancel said deed, upon condition that the foreclosed owners would pay all the charges

to date on the Powell Street property, together with interest, and upon the fourth cause of action, that they should have judgment of The City of New York, in law and equity, for the sum of $6,435.10. It should be noted that this prayer for relief and the allegations in the four causes of action, although in the form of an Article 15 action, in effect amount to nothing more than a request to open their default and permit redemption. *This is the identical relief sought by the foreclosed owners in the present motion upon the same arguments and issues.*

14. Thereafter, on July 13, 1953, a motion by the City for an order dismissing the Trustees' complaint and awarding summary judgment to the City pursuant to Rule 113 of the Rules of Civil Practice and for a further order granting judgment on the pleadings, pursuant to Rule 112 of the Rules for Civil Practice, was argued before Mr. Justice Charles N. Cohen, at a Special Term of this Court in Kings County. In that motion, affidavits of Gerald D. Nelson and of William P. Jones, Esq., were submitted in opposition to the City's motion. *These affidavits are almost identical to the affidavits now submitted by the same deponents in support of the present motion.* Whole passages, tabulations, paragraphs and exhibits are copied verbatim from their former affidavits. For example, in the affidavit of Gerald D. Nelson, the tabulations in Paragraph 18 are the same as [fol. 109] former paragraph 4. Paragraphs 14 through 28 of the affidavit of William P. Jones, Esq. are identical to various paragraphs in his former affidavit. The present Exhibits 9 to 15, annexed to his affidavit, are identical to his former Exhibits, A-G. The present Exhibits 1-8 are merely cumulative evidence and add nothing new to the issue.

15. By an order dated July 14, 1953, Mr. Justice Cohen granted the City's motion and dismissed the foreclosed owners' complaint. In other words, after considering all of the arguments in favor of the foreclosed owners, which are the same as those raised in the present motion, Mr. Justice Cohen decided that the foreclosed owners on any theory of the facts stated had no

cause of action in law or in equity that would call for the setting aside of the judgment and deed and permit them to redeem.

16. Upon an appeal to the Appellate Division, Second Department, from the judgment in favor of the city entered on the order of Mr. Justice Cohen, the Appellate Division, on February 1, 1954, unanimously affirmed the judgment. It stated, however, that such affirmance was

> "* * * without prejudice to plaintiffs taking such proceedings as they may be advised with respect to moving in the foreclosure action to open their default and with respect to enforcing in that action whatever rights or remedies plaintiffs may have. No Opinion."

17. It is clear that the Appellate Division did not state [fol. 110] that the foreclosed owners had any rights to open their default. The decision simply means that *if* the foreclosed owners had any rights they should be enforced in the foreclosure action and not in an action under Article 15 of the Real Property Law. The City now urges, as it did in the prior action, that at the expiration of the periods fixed for redemption and pleading, the rights of the foreclosed owners became fixed and unalterable, and that there is no authority in this Court to permit defaults in redemption or pleading to be opened, either before or after the entry of judgment of foreclosure. The City will again demonstrate that the arguments and issues once again raised by the foreclosed owners are without merit.

The Present Motion

18. The foreclosed owners do not question the validity of the procedure employed by the City in filing the List of Delinquent Taxes and the posting, mailing and publication of the notice of foreclosure prescribed by Section D17-6.0 of the Administrative Code. In fact, they specifically admit mailing by The City of New York of the notice to them at the address of the office maintained by them and the receipt of such notice by their

trusted employee. Further, they do not contend that they redeemed their properties or served answers within the statutory periods provided. What they now seek is an order relieving them of their admitted default and permission to redeem by the payment of all delinquent tax liens with interest.

[fol. 111] A

19. Their first contention is that The City of New York itself wrongfully contributed and is thereby estopped to assert such default. Mr. Nelson alleges in his affidavit (Par. 8) that by sending out tax bills for "two years after the City had taken title to the 45th Avenue property and after the City had commenced this action on December 17, 1951 against the Powell Street property", the City "substantially promoted the bookkeeper's fraud and aided in preventing deponent's discovery of the situation in time to avoid the foreclosure of the much more valuable Powell Street property". Mr. Jones in his affidavit (Paragraphs 7, 8, 9 and 27) not only reaffirms this theory but states that the mailing of the tax bills (Exhibits 3 and 4 attached to the moving papers) by the City was illegal and in violation of Section D17-16.0 of the Administrative Code. In addition, Mr. Jones asserts (Paragraph 23) that the City should have applied part of the payments in large amounts for real estate taxes to the arrears of water charges and to the oldest arrears.

20. In the first place, there is nothing in Section D17-16.0 which can in any way help the delinquent trustees. The section merely provides that it is the duty of the City Treasurer to mail tax bills to the owners of property so far as such owners and their addresses are known. It further provides that the failure of the City Treasurer to mail such tax bills does not invalidate such tax or affect the title of the City or purchaser in [fol. 112] the in rem foreclosure proceeding. The mailing of the bills to the trustees *after* title to the 45th Avenue property was taken by in rem foreclosure is therefore not illegal or in violation of Section D17-16.0. According to Exhibits 6 and 7 attached to the moving papers, such real estate tax bills should have been sent

to the Bureau of Real Estate of the Board of Estimate of the City. For the failure to mail such bills to the Bureau of Real Estate however, only the Bureau of Real Estate can complain.

21. It is difficult to see how the receipt of these bills in 1951 and 1952 (Exhibits 3 and 4) *after* title was taken by the City can excuse the default of the trustees in answering or redeeming *before* title was taken to the 45th Street property on August 22, 1950. Certainly, the City did not wrongfully contribute to the default on the 45th Avenue property and should not be estopped from asserting such default.

22. Mr. Nelson, on page 2 of his affidavit, states that it was his custom as trustee "to spend several hours a week at this office on the affairs of the trust". At such visits, Mr. Nelson states, it was the bookkeeper's duty to bring to his attention and have ready for payment "all bills, including bills for real estate taxes and water charges on the various trust properties". By using just the ordinary business prudence, Mr. Nelson, when he wrote out the check for the payment of the first half of the 1950-1951 taxes in October, 1950 (Exhibit 3) would have seen that the 45th Avenue property was in arrears as of June, 1950. A mere inspection of the face of the [fol. 113] tax bill would have revealed the presence of arrears. This delinquency was again called to Mr. Nelson's attention when the payment was made for the second half of the 1950-1951 taxes in April, 1951.

23. In addition, when the bookkeeper presented the following year's bill (1951-1952, Exhibit 4) to Mr. Nelson for payment, there was again revealed on the face of the tax bill the fact that there were still arrears as of June, 1951, A simple question put to the bookkeeper would undoubtedly have revealed the fraud that was then being perpetrated by him.

24. Grossly negligent in overlooking this distinct notice that something was wrong with the tax status of the 45th Avenue property, Mr. Nelson again in April of 1952 paid the second half of the 1951-1952 taxes in the face of the notice of arrears. At the same times, that is, October, 1950, April, 1951, October, 1951 and April,

1952, as Mr. Nelson was paying taxes on the 45th Avenue property he was also paying the taxes on the Powell Street property. Not only are the arrears on the 45th Avenue property reflected on the master tax sheet for each year beginning with 1947-1948 (Exhibit 5); but they are also reflected on the master tax sheet for each year beginning with 1945-1946 (Exhibit 8) on the Powell Street property. The tax bills for the Powell Street property for each year from 1946-1953 also contained the notice that this property was in arrears so that, twice a year, when Mr. Nelson wrote out the checks for the payment of the taxes on the Powell Street property, he [fol. 114] would have seen the notice of arrears on each tax bill by merely looking at it. It was incumbent on Mr. Nelson as "Managing Trustee" of the Estate to have at least looked at the tax bills on the 45th Avenue and Powell Street properties.

25. There is no allegation by the moving parties that the bookkeeper had concealed the real estate tax bills from Mr. Nelson. In fact in Paragraph 7 of his affidavit, Mr. Nelson states that the bookkeeper "had been regularly presenting to deponent for payment all of the bills for real estate taxes which were paid through the first half of 1951-1952 (except for 1948-1949, second half)." We must assume, therefore, that Mr. Nelson had seen all the tax bills on the Powell Street property. Each bill for every year from 1945-1946 had a notice of arrears printed clearly on the face of the tax bill. The delinquent item of the second half of the 1948-1949 real estate taxes (the eligible item for the in rem foreclosure) was reflected under the notice of arrears on the face of the tax bills for the subsequent years 1949-1950, 1950-1951 and 1951-1952. It is therefore difficult to believe the accuracy of the statement of Mr. Nelson in Paragraph 12 of his affidavit that "until defendants discovered their bookkeeper's defalcation they believed that all charges against their property had been paid and were regularly being paid".

26. Since Mr. Nelson was the "Managing Trustee" of an estate, he is held to a higher degree of care than an individual owner of property. It is well known in The

City of New York that most banks, when acting as mort-
[fol. 115] gagees, and most trust companies when acting in a fiduciary capacity make independent tax searches twice a year to determine the exact status of the properties under their care. The trustee in this case not only failed to exercise ordinary business prudence in examining the tax bills and questioning the statement therein that there were arrears, but was highly negligent in never having an independent tax search made. Had such been done, the situation would have been immediately called to his attention. His failure to have an independent tax search made is especially strange in the face of his statement in Paragraph 17 that he carried on a systematic and regular program of maintenance and repair through a reputable real estate management firm in Brooklyn.

27. It should be noted that the in rem statute was designed to afford to the City a simple, expeditious and inexpensive method of foreclosing its tax liens. In drafting the statute the basic, well-known assumption was indulged in that every property owner is necessarily chargeable with the knowledge that his real estate is subject to the payment of taxes, and that he may forfeit his right of ownership and possession if he neglects to make payment. In the final analysis the duty of keeping himself informed concerning his real property rests on the owner and not on the City. If the owner fails to keep himself informed and if the City complies with the statutory method of giving notice of foreclosure it is the taxpayer's misfortune and he must suffer the consequences. These principles have been stated many times by the Court of Appeals and the Appellate Division.

[fol. 116] 28. The failure of the Trustees to take advantage of the remedies afforded them under the in rem statute is in no way traceable to The City of New York. The failure of the Trustees to receive direct notice of the in rem foreclosure may be laid directly to their misplaced confidence in their trusted employee and agent. It is unfortunate that they placed their trust in a dishonest employee, but since this employee was their agent, then all the acts of said employee are chargeable to them alone.

In no way has The City of New York itself wrongfully contributed to the illegal acts of their agent in an attempt to deprive the foreclosed owners of their property. Their remedy is a civil action for fraud and conversion against their employee.

29. In addition, the first contention of the Trustees that the City itself wrongfully contributed to their default is completely refuted by two notices mailed to the Trustees by the City on June 5 and July 9, 1951 advising them that the 1950-1951 second half taxes had been paid by the City Collector and Mr. Balog, the new owner. The trustees were advised to investigate this matter and to apply for a refund of the tax payments (Exhibits A and B annexed to the affidavit of Joseph G. White, Deputy City Collector). This warning that there was something wrong with the tax status of their property was sent at least nine months before the City acquired title to the Powell Street property, so that the failure to discover the fraud of the bookkeeper in time to avert the foreclosure of the Powell Street property was due to their own negligence in ignoring the City's notification of overpayments.

[fol. 117] 30. Nor is there any merit to the contention that the City should have applied part of the payments in large amounts for real estate taxes to the arrears of water charges and to the oldest arrears. In the first place, there are over 834,000 tax parcels in The City of New York. Separate bills are rendered for water charges and real estate taxes. The property owner has his choice of which bills he desires to pay first or last, or not to pay at all, and he may indicate his choice to the City Collector by appropriate action. The City Collector will accept money from anyone who presents a tax bill for the account of any property. This allows for payments from 1) owners, 2) banks as mortgagees, 3) agents, 4) attorneys, or 5) completely voluntary payments. Payments are applied to specific charges when the property owner submits a specific tax or water bill with a check in payment for such bill. Not to apply the money for the specific charges indicated by the property owner would be complete error. In the absence of a request to make any specific allocation of payments the City Collector will withhold allocation of the payments, pending instructions from the taxpayer.

31. In this case, as is indicated from the moving papers, specific checks were mailed to the City Collector for payment of specific tax bills. The City Collector, therefore, had no authority to apply payments for real estate taxes to water charges or to the oldest items first.

[fol. 118] A

32. Looking around for some microscopic defect as an excuse to find no compliance by the City with Title D, Chapter 17 of the Administrative Code, the foreclosed owners claim that the City acted contrary to the requirements of Section D17-5.0 of the Administrative Code by the filing with the Kings County Clerk of a composite list for all properties in Sections 10, 11, 12 and 13 in the Borough of Brooklyn and with the Queens County Clerk of a composite list of all properties in Sections 1 and 2 in the Borough of Queens, instead of filing a separate list for each tax section and bringing a separate action for each section.

33. The language contained in Section D17-5.0 that "the inadvertent failure of the City Treasurer to include all parcels in such list or where more than one list is filed, all such parcels in the list for the designated section" clearly contemplates the filing by the Treasurer of a composite action. In fact, had separate lists been filed, each constituting a separate action, the City could have moved for their consolidation under Section 96 of the Civil Practice Act.

34. Preliminary to the enactment of the in rem foreclosure statute, a number of conferences were had between Counsel for the Governor, the City's legislative representative, Mr. Harold Herztein, and Mr. Meyer Scheps of the Corporation Counsel's office. Various negotiations and memoranda passed between these persons, some of which bore on the specific question here involved with regard to the unit of foreclosure.

[fol. 119] 35. The City, in seeking to secure the benefits of in rem foreclosure, had, late in the Fall of 1947, prepared for examination by the Governor's Counsel an in rem foreclosure bill. On December 4, 1947, Honorable Charles Breitel, now Justice of the Appellate Division,

First Department, but then Counsel to the Governor, Honorable Lawrence E. Walsh, now United States District Judge but then Assistant Counsel to the Governor, and Mr. George Shapiro, now Counsel to the Governor, but then confidential Assistant to the Governor, met with Mr. Herztein, the City's legislative representative, and Mr. Meyer Scheps, Assistant Corporation Counsel in Mr. Breitel's office in Albany. Mr. Breitel and his staff asked the City to consider certain modifications of Article VII-A of the Tax Law which should be embodied in the City's proposed in rem law. A memorandum of that meeting was prepared, which is among the files in the Corporation Counsel's office and in the files of the Legislative representative of the City in Albany. Part of that memorandum reads as follows:

> "At the conference a number of changes in the bill were suggested by Mr. Breitel. We agreed to make five changes as hereinafter enumerated and described.
>
> * * * * * * *
>
> "1. The 'block' unit.
>
> Mr. Breitel said that the selection of this minute unit was 'ridiculous' because by applying such unit we could, in effect, indulge in discriminatory selections. He suggested the Assembly district unit. We [fol. 120] contended that the (1) Assembly unit had no relationship to the Tax Map; (2) in most instances, such as in Queens, such unit would be too large and (3) the Assembly district is variable by legislative reapportionment. Our counter-suggestion was the 'section' or 'ward' on the Tax Map. We could do no better than that as there are no intermediate units between section and block. Mr. Breitel was willing to accept this suggestion conditioned upon our acceptance of a time limit in which to file lists for all sections. We demurred, and he accepted our suggestion of 'section' or 'ward' without condition."

36. This statement is incorporated in a memorandum dated December 4, 1947, from Mr. Herztein to the then Deputy Mayor of The City of New York, Col. John J. Ben-

nett, and to Mr. William Reid, then chairman of the Board of Transportation and later Deputy Mayor.

37. On December 4, 1947, a letter was sent by Mr. Herztein to Mr. Breitel, which is part of the records of the Mayor's legislative representative in Albany, and also of the files of the Corporation Counsel, and is undoubtedly in the Governor's files, in which the following statement is found:

"Dear Charles:

"Enclosed is a copy of the bill.

"It contains the understanding which we reached on five points in our conference yesterday, as follows:

"* * * *

[fol. 121] "2. At the tip of page 3 I changed the unit from the 'block' to the 'section' or 'ward'. Of course the correct description was carried throughout the bill."

38. The suggested change was incorporated in Section D17-5.0 of the Administrative Code as it was enacted at the session of the Legislature then meeting.

39. The foregoing discussion indicates what the purpose of the language "section or ward" was intended to be. Counsel to the Governor at first desired to incorporate in one action a unit as large as an Assembly district, believing that the larger the unit and the greater the number of parcels included in one action, the greater would be the notice afforded to delinquent taxpayers. The City at first desired the "block" unit but both the Counsel for the Governor and the City's representatives agreed on the unit comprising a tax section. No fault may be found with the City Treasurer's combining more than one section in one *list* since this is calculated to give more notice to delinquent taxpayers and is in accordance with the intent of the Legislature.

40. No prejudice would result to the foreclosed owner by a composite action because the cover of the List is clearly marked with the numbers of the sections involved and names the Borough of the City affected. The List, whether single or composite, contains in the caption the

number or numbers of the sections affected, and a separate description of each section affected, as required by [fol. 122] Section D17-5.0 of the Administrative Code. In addition, each List, single or composite, contains serial numbers for each parcel of property listed, together with the section, block and lot for each property, numerically arranged. No one seeking the information with regard to his own tax delinquency and examining the List, whether single or composite, could possibly be misled.

41. When the in rem foreclosure statute speaks of "each such list" it is submitted that it was merely intended to be directory to the Treasurer and not mandatory. What in effect the Treasurer was being told by the Legislature was that "you may not file a list for *less* than a section." There is, however, no word of prohibition that he may not file for more than one section. If the Treasurer found it advisable to combine deli-quent parcels in a number of sections, there certainly could be no basic or fundamental objection to such a practice.

42. It should be noted for the record that, although this statute has been in effect since April 1948, it has been in actual use only since March, 1950. Since March, 1950, the City has filed in rem foreclosure lists affecting over 53,000 parcels, and title to over 26,000 parcels has vested in The City of New York. Of the 38 actions in all five boroughs of the City commenced since March, 1950, affecting 109 tax sections, 20 actions affecting 89 sections have been based on composite lists. Thousands of titles derived by the City under this statute have been passed to purchasers for value. Such titles in most instances have been passed on [fol. 123] by competent counsel and insured by reputable title companies. For this Court to hold that the filing of a composite list constitutes a serious defect in the foreclosure proc-eding would, without exception, make every title acquired through in rem foreclosure in which a composite list was filed suspect and vulnerable resulting in a total defeat for the present program of tax delinquency liquidation.

C

43. The last contention of the moving parties is that the application by The City of New Yor' of Title D of Chap-

ter 17 of the Administrative Code for collection of tax liens on their properties, under all the circumstances of this case, violates their rights under the Constitution of the United States and of the State of New York. Although they do not challenge the general constitutionality of Title D of Chapter 17 of the Administrative Code, yet they contend that a) because of the disparity between the amount of the delinquent tax liens and the value of the properties foreclosed in rem, the City's actions amounted to expropriation for it intended not the collection of the taxes but the seizure of the properties and b) because their properties were improved and income-producing a different tax enforcement procedure should have been applied to their properties from that employed against every other delinquent property in the sections involved, and that the City should have sold the tax arrears under a transfer of tax lien.

[fol. 124] 44. With respect to the claim that the acquisition of their property was confiscatory in nature, it is clear that on May 22, 1950 and December 7, 1951, when the two foreclosure actions were respectively commenced by the City, there were due and unpaid for a period of at least four years tax liens on the 45th Avenue and Powell Street properties. Consequently they might be summarily foreclosed by actions in rem according to Section D17-4.0 of the Administrative Code.

45. The decision to foreclose was for the Treasurer to make. Foreclosure by action in rem, however, could not be brought solely against the properties owned by the foreclosed owners. It was incumbent upon the Treasurer, when foreclosing by this method, to prepare a list of delinquent taxes containing all the parcels within a particular section designated on the City's Tax Maps. Therefore, when the Treasurer selected Section 12 of the Borough of Brooklyn and Section 1 of the Borough of Queens as the subjects of in rem foreclosure it was mandatory that he include in the lists of delinquent taxes all the properties of the foreclosed owners which were then more than four years tax-delinquent. Indeed, had the Treasurer been desirous of excluding these properties from foreclosure he could not have done so because the Trustees

had not placed themselves within one of the four specific statutory reasons for exclusion set forth in Section D17-5.0 of the Administrative Code. The disparity between the amount of unpaid taxes and the value of their properties [fol. 125] is, in itself, no reason to exclude such properties from the action. The Legislature did not give the Treasurer this power of selection. The only right of selection is as to the tax section to be foreclosed. He *must* include *every* parcel delinquent four or more years in the section. When that is done, all discretion is taken from him.

46. The Legislature was well aware of the possibility of a person being delinquent in a small amount on property of considerable value. It therefore wrote several safeguards into the law for the protection of the taxpayer. It permitted him under Section D17-7.0 of the Administrative Code to place his name and address on record with the Treasurer so that he might receive mailed notices for in rem foreclosures. It also gave the property owner a period of grace for four years before the in rem foreclosure action could be instituted.

47. Both Mr. Nelson in paragraph 20 of his affidavit and Mr. Jones in paragraph 28 of his affidavit attach a sinister intent to The City of New York because it was discovered by them that the Powell Street property was coincidentally included in a site which had been chosen for a proposed unsubsidized housing project. The statement by Mr. Jones that it is his belief that

> "this quasi public use of defendant's property was determined before its foreclosure in rem and that the City well knew from all the facts that it was likely to win an in rem foreclosure action by default and that [fol. 126] the property could be very profitably confiscated to avoid the normal and more equitable condemnation proceeding"

not only attributes dishonest motives to the public officials involved but is also absurd.

48. In the first place the in rem foreclosure action has no relation to any proposed housing development. Tax enforcement is an extension of the legislative power to tax

and it is in no wise related to the power of eminent domain; they are separate governmental functions. The judgment roll on file will show that Sections 10 to 13, inclusive, in Brooklyn cover an area which includes parts of the Greenpoint, Williamsburg, Ridgewood, Bushwick, East New York and Cypress Hills sections. In the second place, there is no possible way of the City knowing in advance that the moving parties would default, especially in view of the fact that the City mailed the proper foreclosure notices to the moving parties and in view of their admitted receipt. They had the opportunity of interposing any objections they might have had either to the validity of the tax liens or to the applicability of in rem foreclosure to their properties. The failure to take advantage of these remedies is not traceable to the City but to their selection of a dishonest employee. Since their properties, perforce of the statute, had to be included in the action, their taking cannot be considered confiscatory.

49. The foreclosed owners further contend that the City instead of foreclosing by an action in rem should have sold tax liens under Chapter 17, Title A of the Administrative [fol. 127] Code and that when the Legislature, in 1948, enacted the in rem foreclosure law, it intended that the City continue to follow the procedure of sales of tax liens with respect to improved properties. The moving parties compare the provisions of Article VII-A of the Tax Law with those of the Administrative Code. They attempt to show a similarity between the foreclosure provisions of Title 2 of Article VII-A of the Tax Law and the requirements for sale of transfers of tax liens under Chapter 17, Title A of the Code. They also draw a comparison between the in rem foreclosure provisions of Title 3 of Article VII-A and those of Chapter 17, Title D of the Code. The purpose of making these comparisons is to show by lengthy quotations of matter appearing in the Governor's bill jacket relating to the enactment of Article VII-A that the Legislature never intended that in rem foreclosure be applied to improved properties.

50. Title D of Chapter 17 of the Administrative Code under which the City foreclosed the properties here involved is on its face clearly applicable to all property

whether improved or unimproved. The moving parties in attempting to limit the application of Title D to unimproved property are not only flying in the face of the clear language of that statute but are attempting to do so by reference to a totally different statute. The in rem foreclosure statute does not give the Treasurer power to distinguish between improved and vacant properties, nor is the sale of a transfer of tax lien prerequisite to enforcement by foreclosure in rem. These remedies to enforce collection of tax arrears are alternative.

[fol. 128] 51. The City Treasurer in this case has fully complied with all the jurisdictional requirements and has properly exercised his discretion. Having done so, this case falls squarely within the doctrine of *City of Peekskill* v. *Perry*, 272 App. Div. 940 (2nd Dept.) which holds that after the time to redeem or answer has expired, the rights of the parties became "fixed and unalterable".

52. It is respectfully submitted that this Court is absolutely precluded under the *Peekskill* case from exercising its equitable powers to allow defaults in redemption or pleading to be opened either before or after the entry of judgment of foreclosure. Such equitable powers have been cut off by the act of the Legislature. The Appellate Division has stated that the expiration of time to redeem or answer "precludes the court from extending . . . the time to answer or redeem." On the argument of this motion a memorandum of law citing the applicable cases will be submitted to the Court.

WHEREFORE, I respectfully pray that the motion of the foreclosed owners be denied for the reasons, among others, that all proceedings in this action have been in accordance with the statute and that there is no power in this Court to open the default for the purpose of allowing a redemption or interposing an answer, and for such other and further relief as may be just and proper.

Joseph Brandwen.

(Sworn to April 13, 1954.)

[fol. 129] Affidavit of Joseph G. White in Action No. 4, Read in Opposition to Motions.

STATE OF NEW YORK,
County of New York, ss.:

Joseph G. White, being duly sworn, deposes and says:

1. I am a Deputy City Collector and have been associated with the City Collector's office since 1938. I am fully familiar with the practice and procedures of the Department of Finance in connection with the preparation and mailing of tax bills and the collection and allocation of real estate tax payments.

2. I have examined Exhibits 3, 4 and 5 annexed to the moving papers. Exhibit 3 was processed for the 1950-51 taxes in July 1950 along with over 300,000 tax bills in the Borough of Queens. The name and address are placed thereon by an addressograph plate. This bill was mailed during the month of September 1950 and shows that this property was in arrears as of June 30, 1950.

3. Exhibit 4 was *not* mailed by the City to the trustees and was *not* processed in the regular course in July 1951. The bill was requested by the taxpayer either by mail or at the bookkeeper's window. This is apparent from the face of the tax bill which does not show the imprint of [fol. 130] an addressograph plate but is typed on a machine. Exhibit 4, likewise, shows arrears as of June 30, 1951.

4. When the word "arrears" appears in the column "Notice of arrears" and in the space indicated by the arrow, it means that as of June 30th previous taxes, assessments or *water charges* have not been recorded as paid. This is clearly stated on the face of the tax bill along with the warning that if taxes, assessments or water charges are unpaid for a period of *four* years, the *property may be foreclosed by an action in rem.*

5. In view of the mechanical business machine operation it is almost impossible to correlate over 300,000 tax bills in the County of Queens to the remarks on the tax ledger sheets. It is the duty of the taxpayer to call attention to any discrepancies to the City Collector and to examine

for himself the notations under the column "Remarks" on the tax ledger sheets which are public records and open for inspection. These sheets are examined daily by tax searchers, title companies, banks, attorneys and owners. The City of New York will provide any taxpayer with a certified copy of a tax search upon payment of a nominal fee as provided for in Section 415(1)-20.0, 21.0 and 22.0 of the Administrative Code.

6. When a specific tax bill is returned by the taxpayer to the City Collector with payment in the same amount, the City Collector will credit that tax bill with the exact amount of the payment. In the absence of any instruction by the taxpayer, the City Collector will not credit [fol. 131] earlier items of arrears since the choice of paying or not paying, and the choice of what items are to be paid is that of the taxpayer.

7. On April 19, 1951, the property designated as Section 1, Block 78, Lot 9 (45th Avenue property) in the County of Queens was conveyed by the City to John Balog. According to Exhibit 5, the second half of the 1950/51 taxes were paid by the foreclosed owners, and by the City Collector and John Balog. The City Collector cancelled the sum of $58.53 and John Balog paid the sum of $39.57 or a total of $98.10 the amount of the second half taxes. There was thus a double payment or overpayment.

8. As a result, the City Collector notified the Estate of William Nelson by mail on June 5, 1951 and July 9, 1951 of these overpayments as indicated by the attached Exhibits A and B. These notices were not returned, nor has any claim for a refund been made by the Estate of William Nelson. Exhibits A and B clearly advise the taxpayer to investigate the matter.

Joseph G. White.

(Sworn to April 13, 1954.)

[fol. 132] EXHIBIT A, ANNEXED TO AFFIDAVIT OF JOSEPH G. WHITE

The City of New York

DEPARTMENT OF FINANCE
Spencer C. Young
Treasurer

Bureau of City Collections
Alexander E. Frontera
City Collector

Jacob L. Behrman
Acting Deputy City Collector
Queens

Borough Hall
Kew Gardens 15, N. Y.

Jun 5 1951

Mr. William Nelson
36 West 44th Street
New York City, N. Y.

Re:

Sec. or Ward	Block	Lot
1	78	9

Dear Sir:

You appear to have made payment on the above described property, to wit:

Charge	Date	CB-Fol.	Principal
1950/51 2nd half	5/2/51	36/172	$98.10

This charge appears to have also been paid as follows:

Date	CB-Fol.	Payor and Address	Principal
5/14/51	41/21	Mr. Balog 3168—34th Street Long Island City, L. I.	$39.57

Please Investigate the Matter

If the two payments were made on your behalf or for the owner, to procure a refund or transfer of overpayment, kindly submit the following:

[fol. 133] Receipted Bills and Cancelled Checks (if Paid by Check) for Both Payments

Should you find that your payment was made on the wrong property—please submit:

1. Receipted bill and cancelled check (if paid by check) for your payment.
2. Advice as to section or ward, block and lot description of your property.

Upon receipt of the required documents, application for refund or transfer will be prepared. It is unnecessary to pay fees or retainers for securing adjustment. Your reply should be addressed to the attention of Refund Division.

Very truly yours, J. L. Behrman, Deputy City Collector, Borough of Queens

#4 GG

[fol. 134] EXHIBIT B, ANNEXED TO AFFIDAVIT OF JOSEPH G. WHITE

The City of New York
DEPARTMENT OF FINANCE
Spencer C. Young
Treasurer
Bureau of City Collections
Alexander E. Frontera
City Collector
Jacob L. Behrman
Acting Deputy City Collector
Queens
Borough Hall
Kew Gardens 15, N. Y.

Jul 9 1951

Estate of William Nelson
36 West 44th Street
New York City, N. Y.

Re:

Sec. or Ward	Block	Lot
1	78	9

Dear Sir:

You appear to have made payment on the above described property, to wit:

Charge	Date	CB-Fol.	Principal
1950/51 2nd half	5/2/51	36/172	$98.10

This charge appears to have also been paid as follows:

Date	CB-Fol.	Payor and Address	Principal
6/7/51	39/128	City Collector	$58.53

Please Investigate the Matter.

If the two payments were made on your behalf or for the owner, to procure a refund or transfer of overpayment, kindly submit the following:

[fol. 135] Receipted Bills and Cancelled Checks (if Paid by Check) for Both Payments

Should you find that your payment was made on the wrong property—please submit:

1. Receipted bill and cancelled check (if paid by check) for your payment.

2. Advice as to section or ward, block and lot description of your property.

Upon receipt of the required documents, application for refund or transfer will be prepared. It is unnecessary to pay fees or retainers for securing adjustment. Your reply should be addressed to the attention of Refund Division.

Very truly yours, J. L. Behrman, Deputy City Collector, Borough of Queens

#4 GG

[fol. 136] Supreme Court of the State of New York, County of Queens.

In the Matter

of the

Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York, List of Delinquent Taxes, Sections 1 and 2, Borough of Queens, Action No. 1 (Serial No. 83, Section 1, Block 78, Lot 9).

Affidavit of Joseph Brandwen, Read in Opposition to Motion in Action No. 1.

State of New York,
County of New York, ss.;

Joseph Brandwen, being duly sworn, deposes and says:

1. I am an Assistant Corporation Counsel of The City of New York and in charge of the within motion and fully familiar with all the facts and circumstances here-

inafter set forth. This affidavit is made in opposition to the motion pursuant to Section 108, Civil Practice Act, for relief from the default judgment entered in this action.

2. All of the facts set forth in my affidavit in opposition [fol. 137] to the motion in the Kings County action in connection with The 45th Avenue Property and its foreclosure *in rem* by the City are incorporated herein by reference as though duly set forth herein. In like manner, the Exhibits annexed to the affidavit of Joseph G. White in opposition to the motion in the Kings County action are incorporated by reference herein. A copy of my affidavit and the affidavit of Joseph G. White with the Exhibits are annexed hereto.

WHEREFORE, I pray that the motion of the Trustees and the moving parties be denied.

Joseph Brandwen.

(Sworn to April 13, 1954.)

Reply Affidavit of William P. Jones in Actions No. 4 and No. 1, Read in Support of Both Motions.

STATE OF NEW YORK,
County of New York, ss.:

William P. Jones being duly sworn deposes and says:

That he is an attorney of the State of New York and a member of the firm of Perkins, Malone & Washburn, attorneys for the defendants, the foreclosed owners herein, [fol. 138] and that he is fully familiar with this application and with all prior proceedings herein and makes this affidavit in reply to the answering affidavit of Joseph Brandwen, Esq., Assistant Corporation Counsel, dated April 13, 1954.

(1) The same affidavit is used in connection with each motion in each action herein.

(2) The answering affidavit of Mr. Brandwen seems to require only a short reply to clarify the extensive innuendo and to refute several misstatements of fact.

(3) In the prior action to recover their properties the present defendants included all of the pertinent facts and all of the possible bases of recovery; obviously the same set of facts and the same bases of recovery necessarily are the support for their present motions.

(4) The statement contained in Paragraph "18" of Mr. Brandwen's affidavit that "The foreclosed owners do not question the validity of the procedure employed by the City in filing the list of delinquent taxes" is directly contrary to fact since one of the grounds of both motions (2) of the notice of motion is that the City failed to comply with Title D of Chapter 17 of the Code. This ground is reiterated in the supporting affidavits of Mr. Nelson and Mr. Jones.

(5) The matter contained in Mr. Brandwen's affidavit commencing at his Paragraph "34" in regard to the legislative history of Title D, Chapter 17 of the Code confirms [fol. 139] the specific requirement of the Code that a separate list be filed for each section and a separate action brought for each section. Mr. Brandwen's suggestion that the City could have moved for consolidation under Section 96 of the Civil Practice Act seems unsubstantial in face of statutory requirements to the contrary.

(6) From the affidavit of Joseph G. White, a Deputy City Collector, it clearly appears that the second erroneous tax bill in connection with the 45th Avenue property was made out directly contrary to the City's own administrative practices, since it seems clear that no such bill would ever have been mailed in the ordinary course of business. In addition, this bill was made out to "Estate of William Nelson, 36 West 44th Street, New York 18, New York" in complete disregard to the data then on file as to the ownership of the parcel involved. While a city employee might negligently furnish a stranger with a tax bill on any property the writing in of the wrong name of the owner thereof seems to indicate something beyond mere negligence.

William P. Jones (Sgd.)

(Sworn to April 14, 1954.)

[fol. 140] IN THE SUPREME COURT OF NEW YORK

OPINION OF DIGIOVANNA, J.—May 4, 1954

In re Foreclosure of Tax Liens (Estate of William Nelson)—Both motions are treated as one. Application for an order pursuant to Civil Practice Act, section 108, relieving the defendants, the foreclosed owners of the respective fee titles, from default judgments of foreclosure in rem and permitting the defendants to redeem the parcels in question by payment of all tax liens, with interest, or permitting the defendants to interpose answers in the above entitled actions. Upon the record herein it appears that all proceedings in these actions have been in accordance with Title D of Chapter 17 of the Administrative Code of the City of New York. In particular the trustees admit mailing by the City of New York of the notice of foreclosure to them at the address of the office maintained by th n and the receipt of such notice by their trusted employee. The failure of the trustees to receive direct notice of the in rem foreclosure is attributable to their misplaced confidence in their trusted bookkeeper and agent, who allegedly concealed all notices received from the city to cover up his defalcations. The provisions of Administrative Code, Title D, section 17-6.0, preclude the court from extending the time to answer or redeem (*Matter of Foreclosure of Tax Liens. Town of Somers* [Covey], App. Div., 2d Dept., N. Y. L. J., April 13, 1954, p. 10; *Hawley* v. *City of N. Y.*, App. Div., 2d Dept. N. Y. L. J., April 13, 1954, p. 10; *City of N. Y.* v. *Lynch*, 281 App. Div., 1038, aff'd by the Court of Appeals, N. Y. L. J., March 8, 1954, p. 6). Both motions are denied in all respects. Settle order on notice.

[fol. 141-142] IN THE SUPREME COURT OF NEW YORK

STIPULATION WAIVING CERTIFICATION—July 14, 1954

We hereby stipulate that the foregoing are true and correct copies of the notices of appeal, orders appealed from, and all the papers used before the Court below in making the orders appealed from herein and the whole thereof which are on file in the office of the Clerks of the Counties of Kings and Queens respectively, and that certification thereof pursuant to Section 616 or otherwise hereby is waived.

Dated, July 14, 1954.

Perkins, Malone & Washburn, Attorneys for Defendants-Foreclosed Owners-Appellants,
Adrian P. Burke, Corporation Counsel, Attorney for Plaintiff-Respondent.

[fol. 143] NEW YORK SUPREME COURT, COUNTY OF KINGS

Kings County Clerk's Index No. 8700/1951

In the Matter of the Foreclosure of Tax Lieus pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York, List of Delinquent Taxes, Sections 10, 11, 12 and 13, Borough of Brooklyn, Action No. 4, Serial No. 887, Section 12, Block 3831, Lot 12.

THE CITY OF NEW YORK,
Plaintiff-Respondent,

GERALD D. NELSON, GERALDINE D. N. ACKER and GERTRUDE N. FITZPATRICK, as Successor Trustees under the Will of William Nelson, deceased, and HELEN D. MOLLER,
Defendants-Foreclosed Owners, Appellants.

NEW YORK SUPREME COURT, COUNTY OF QUEENS

Queens County Clerk's Index No. 3000/1950

In the Matter of the Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of the City of New York, List of Delinquent Taxes, Sections 1 and 2, Borough of Queens, Action No. 1, Serial No. 83, Section 1, Block 78, Lot 9.

THE CITY OF NEW YORK,
Plaintiff-Respondent,

GERALD D. NELSON, GERALDINE D. N. ACKER and GERTRUDE N. FITZPATRICK, as Successor Trustees under the Will of William Nelson, deceased, and HELER D. MOLLER,
Defendants-Foreclosed Owners-Appellants.

NOTICE OF APPEAL TO COURT OF APPEALS—January 25 1953

Sir:

Please take notice that pursuant to leave granted by the order of the Court of Appeals dated and filed in that Court January 6, 1955, and upon the questions of law submitted in defendants' motion to the Court of Appeals

for leave to appeal dated December 20, 1954, the above-named Defendants-Foreclosed Owners-Appellants hereby appeal to the Court of Appeals from the order of the [fol. 144] Appellate Division, Second Judicial Department, filed in the office of the Clerk of that Court on October 11, 1954, unanimously affirming two orders of the Supreme Court denying defendants' motions for relief from default judgments entered in the above-entitled foreclosure *in rem* actions, and this appeal is taken from the whole and from each and every part of said order of said Appellate Division of October 11, 1954, and for the review of the following questions of law:

1. Were the default judgments suffered by defendants in the foreclosure *in rem* actions of such a class that defendants were not entitled to relief under Section 108 of the Civil Practice Act even though the defaults were taken against them through their mistake, inadvertence, surprise or excusable neglect?

2. If question No. "1" is answered in the negative was it error for the Courts below to deny defendants' application for relief under Section 108 of the Civil Practice Act?

3. Was Chapter 17, Title D. Section D17-6.0 of the Administrative Code of the City of New York properly interpreted as containing a Statute of Limitations conclusively terminating defendants' right to redeem or answer in these foreclosure *in rem* actions?

4. If question No. "3" is answered in the affirmative did not the City of New York wrongfully contribute to defendants' default in such a way that [fol. 145] it is estopped to assert a Statute of Limitations or to take the benefit of defendants' default?

5. Did the City of New York fail to comply with the jurisdictional requirements of Title D. Section D17-5.0 of the Administrative Code of the City of New York?

6. Was the City's choice of the alternate *in rem* method of collecting tax liens a violation of defendants' rights under the Constitutions of the State of New York or of the United States under the circum-

stances of this particular case and in view of legislative intent?

Dated: New York, N. Y.

January 25, 1955

Yours, etc., WASHBURN, GRAY & JONES, Attorneys for Defendants-Foreclosed Owners-Appellants, Office and P. O. Address, 36 West 44th Street, New York 36, N. Y.

To:

Leo A. Larkin, Esq., Acting Corporation Counsel, Attorney for Plaintiff-Respondent, Municipal Building, Borough of Manhattan, New York City, and the Clerk of the County of Kings, the Clerk of the County of Queens.

[fol. 146] STATE OF NEW YORK, IN COURT OF APPEALS

In the Matter of the Foreclosure of Tax Liens pursuant to Title D. of Chapter 17 of the Administrative Code of the City of New York, &c., and another proceeding,
THE CITY OF NEW YORK, Respondent,

GERALD D. NELSON & ors., as Successor Trustees under the Will of William Nelson, deceased, & ano., Appellants.

ORDER OF COURT OF APPEALS GRANTING LEAVE TO APPEAL—January 6, 1955

A motion for leave to appeal to the Court of Appeals [fol. 147] in the above causes having been heretofore made upon the part of the appellants herein, and papers having been duly submitted thereon, and due deliberation thereupon had:

Ordered, that the said motion be and the same hereby is granted.

(Seal)

STATE OF NEW YORK,
Court of Appeals

A Copy

Gearon Kimball, Deputy Clerk.

[fol. 148] IN THE SUPREME COURT OF NEW YORK,
APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT

In the Matter of the Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York. (List of Delinquent Taxes—year 1951—Sections 10, 11, 12 and 13—Borough of Brooklyn, Action No. 4—Serial No. 887—Section 12—Block 3831—Lot 12.)

In the Matter of the Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York. (List of Delinquent Taxes—year 1950—Sections 1 and 2—Borough of Queens, Action No. 1—Serial No. 83—Section 1—Block 78—Lot 9.)

THE CITY OF NEW YORK, Respondent,

GERALD D. NELSON, GERALDINE D. N. ACKER and GERTRUDE N. FITZPATRICK, as Successor Trustees under the Will of William Nelson, deceased, and HELEN D. MOLLER,
Appellants.

ORDER OF AFFIRMANCE ON APPEALS FROM ORDERS—October 11, 1954

The above named Gerald D. Nelson, Geraldine D. N. [fol. 149] Acker and Gertrude N. Fitzpatrick, as Successor Trustees, etc., and Helen D. Moller, etc., defendants, in these actions having appealed to the Appellate Division of the Supreme Court from two orders of the Supreme Court entered in the offices of the Clerks of the Counties of Kings and Queens on the 14th day of May, 1954, denying their motions, pursuant to section 108, Civil Practice Act, to relieve them from default judgments en-

tered in the foreclosure actions, and for other relief, herein, and the said appeals having been argued by Mr. William P. Jones of Counsel for appellants, and argued by Mr. Joseph Brandwen, Assistant Corporation Counsel, of Counsel for respondent, and due deliberation having been had thereon; and upon the opinion and decision slip of the court herein, heretofore filed:

It is Ordered that the orders so appealed from be and the same hereby are unanimously affirmed, without costs.

Enter:

John J. Callahan, Clerk.

[fol. 150] In the Court of Appeals of New York

Affidavit of No Opinion by Appellate Division—February 10, 1955

State of New York,
County of New York—ss.:

William P. Jones, being duly sworn, says:

I am a member of the firm of Washburn, Gray & Jones, the attorneys for the defendants-foreclosed owners-appellants in this action and am familiar with all the proceedings herein.

No opinion was delivered by the Appellate Division, Second Department.

William P. Jones.

Sworn to before me this 10th day of February, 1955.
Anthony A. Scarpati, Notary Public, State of New York, No. 41-8782100, Qualified in Queens County, Cert. filed with N. Y. Co. Clerk, Term Expires March 30, 1956.

[fol. 151] IN THE COURT OF APPEALS OF NEW YORK

STIPULATION WAIVING CERTIFICATION OF RECORD TO COURT OF APPEALS—February 10, 1955

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the foregoing are true and correct copies of the Papers on Appeal to the Appellate Division, Second Department: the Order of Affirmance and the Notice of Appeal to the Court of Appeals, all of which are on file in the office of the Clerk of the County of Kings, as well as the order of the Court of Appeals granting leave to appeal which is on file with the Clerk of said Court.

Certification of all of the foregoing papers is hereby waived.

Dated, February 10, 1955.

Washburn, Gray & Jones, Attorneys for Defendants-Foreclosed Owners-Appellants,
Peter Campbell Brown, Corporation Counsel, Attorney for Plaintiff-Respondent.

[fol. 152] IN THE COURT OF APPEALS OF NEW YORK

Present: Hon. ALBERT CONWAY, Chief Judge, presiding.

In the Matter of the Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of the City of New York, &c. and another proceeding,
THE CITY OF NEW YORK, Respondent,

GERALD D. NELSON & ors., as Successor Trustees under the Will of William Nelson, deceased, & ano., Appellants.

ORDER SUBSTITUTING ATTORNEYS—January 8, 1955

On reading and filing the annexed consent, it is

Ordered, that Washburn, Gray & Jones, Esqs., be and they hereby are substituted as attorneys for the appellants herein in the place and stead of Perkins, Malone & Washburn, Esqs.

[fol. 153] IN THE COURT OF APPEALS OF NEW YORK

No. 38

In the Matter of the Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York, &c. and another proceeding, THE CITY OF NEW YORK, Respondent,

GERALD D. NELSON, & ors., as Successor Trustees under the Will of William Nelson, Deceased, & ano., Appellants.

REMITTITUR—July 8, 1955

Be it remembered, That on the 14th day of February, in the year of our Lord one thousand nine hundred and fifty-five, Gerald D. Nelson, & ors., as Successor Trustees under the Will of William Nelson, Deceased, & ano., the appellants in these causes, came here unto the Court of Appeals, by Washburn, Gray & Jones, their attorneys, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the Second Judicial Department. And The City of New York, the respondent—in said causes, afterwards appeared in said Court of Appeals by Peter Campbell Brown, its attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard these causes argued by Mr. William P. Jones, of coun-[fol. 154] sel for the appellants, and by Mr. Meyer Scheps, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, without costs. And thereafter a motion to amend this remittitur having been granted the said remittitur is amended by adding hereto the following:

> Upon the appeal herein there were presented and necessarily passed upon questions under the Constitution of the United States, as follows: The appel-

lants argued that the taking by the City of New York of the property here involved was, on this record, a taking of private property for public use without just compensation under the Fifth Amendment, and deprived them of due process and equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States. The Court of Appeals held that the rights of the defendants under the Fifth and Fourteenth Amendments of the Constitution of the United States had not been violated or denied. (See City of New York v. Nelson, 309 N. Y. 94).

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said order be affirmed, without costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and [fol. 155] provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

(s) Raymond J. Cannon, Clerk of the Court of Appeals of the State of New York.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 156] IN THE COURT OF APPEALS OF NEW YORK

[Title omitted]

STAY ORDER—October 13, 1955

A motion having heretofore been made herein upon the part of the appellants for an order staying the City of New York from proceeding with the sale or disposition of the subject property and papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said motion be and the same hereby is granted and the City of New York stayed from further proceedings to and including November 12, 1955, to enable the appellants to apply to the Supreme Court of the United States or to a Justice thereof for a stay in connection with an application for a writ of certiorari.

(Seal)

Gearon Kimball, Deputy Clerk.

[fol. 157] IN THE COURT OF APPEALS OF NEW YORK

[Title Omitted]

ORDER DENYING REARGUMENT AND AMENDING REMITTITUR—October 13, 1955

A motion for reargument or, in the alternative, to amend the remittitur in the above cause having been heretofore made upon the part of the appellants herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said motion, insofar as it seeks reargument, be and the same hereby is denied, and it is

Further ordered, that the said motion, insofar as it seeks to amend the remittitur, be and the same hereby is granted. Return of the remittitur requested and, when returned, it will be amended by adding thereto the following:

> Upon the appeal herein there were presented and necessarily passed upon questions under the Consti-

tution of the United States, as follows: The appellants argued that the taking by the City of New York of the property here involved was, on this record, a taking of private property for public use [fol. 158] without just compensation under the Fifth Amendment, and deprived them of due process and equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States. The Court of Appeals held that the rights of the defendants under the Fifth and Fourteenth Amendments of the Constitution of the United States had not been violated or denied. (See City of New York v. Nelson, 309 N. Y. 94.)

And the Supreme Court, Kings County, is hereby requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

(Seal)

Gearon Kimball, Deputy Clerk.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 159] NEW YORK SUPREME COURT, COUNTY OF KINGS

Kings County Clerk's Index No. 8700/1951

In the Matter of the Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York, List of Delinquent Taxes, Sections 10, 11, 12 and 13, Borough of Brooklyn, Action No. 4, Serial No. 887, Section 12, Block 3831, Lot 12. THE CITY OF NEW YORK, Plaintiff-Respondent,

GERALD D. NELSON, GERALDINE D. N. ACKER and GERTRUDE N. FITZPATRICK, as Successor Trustees under the Will of William Nelson, deceased, and HELEN D. MOLLER, Defendants-Foreclosed Owners, Appellants.

NEW YORK SUPREME COURT, COUNTY OF QUEENS

Queens County Clerk's Index No. 3000/1950

In the Matter of the Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York, List of Delinquent Taxes, Sections 1 and 2, Borough of Queens, Action No. 1, Serial No. 83, Section 1, Block 78, Lot 9.

THE CITY OF NEW YORK, Plaintiff-Respondent,

GERALD D. NELSON, GERALDINE D. N. ACKER and GERTRUDE N. FITZPATRICK, as Successor Trustees under the Will of William Nelson, deceased, and HELEN D. MOLLER, Defendants-Foreclosed Owners-Appellants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—December 2, 1955

I. Notice is hereby given that Gerald D. Nelson, Geraldine D. N. Acker and Gertrude N. Fitzpatrick, as Suc-
[fol. 160] cessor Trustees under the Will of William Nelson, deceased, and Helen D. Moller, the Appellants above named, hereby appeal to the Supreme Court of the United States from the final order and judgment of the Court of Appeals of the State of New York dated October 13, 1955, sustaining the validity under the Fourteenth Amend-

ment to the United States Constitution of the taking by the City of New York of the properties herein involved under Chapter 17, Title D of the Administrative Code of the City of New York, being Chapter 411 of the laws of 1948 of the State of New York, which final order was entered in this action in the Office of the Clerk of Kings County on November 16, 1955, and in the Office of the Clerk of Queens County on November 28, 1955, on a motion for reargument and amendment of the Remittitur relative to the decision of the Court of Appeals rendered July 8, 1955.

This appeal is taken pursuant to 28 U. S. C., Section 1257 (2).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Notice of Appeal to the Supreme Court of the United States,

2. Order of the Court of Appeals dated October 13, 1955,

3. Order of the Court of Appeals dated July 8, 1955, and

4. Record on Appeal to the Court of Appeals of the State of New York.

[fol. 161] III. The following questions are presented by this appeal:

1. Whether the taking by the City of New York of Appellants' two properties herein involved was, on the facts presented in the Record, a deprivation of their property without due process under the Fourteenth Amendment to the United States Constitution?

2. Whether the taking by the City of New York of Appellants' two properties herein involved was, on the facts presented in the Record, a denial of equal protection of the laws under the Fourteenth Amendment to the United States Constitution?

3. Whether Chapter 17, Title D of the Administrative Code of the City of New York, being Chapter 411 of the laws of 1948 of the State of New York is repugnant to the United States Constitution as it was applied by the City of New York in taking Appellants' two properties under the circumstances and on the facts presented in the Record, in that such application results in a deprivation of property without due process and denies Appellants equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution?

William P. Jones, Attorney for Gerald D. Nelson, et al, Appellants (Washburn, Gray & Jones), 36 West 44th Street, New York 36, N. Y.

Dated: New York, N. Y.

November 30, 1955.

[fol. 162] Affidavit of Service (Omitted in Printing)

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 163] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 164] SUPREME COURT OF THE UNITED STATES

[Title Omitted]

Order Noting Probable Jurisdiction—May 14, 1956

Appeal from the Court of Appeals of the State of New York.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

May 14, 1956.

No. [redacted] 30

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

Kings County Clerk's Index No. 8700, Year 1951

In the Matter of the

Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York,

LIST OF DELINQUENT TAXES

Sections 10, 11, 12 and 13
Borough of Brooklyn, Action No. 4

Serial No.	Section	Block	Lot
887	12	3831	12

Queens County Clerk's Index No. 3000, Year 1950

In the Matter of the

Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York,

LIST OF DELINQUENT TAXES

Sections 1 and 2
Borough of Queens, Action No. 1

Serial No.	Section	Block	Lot
83	1	78	9

THE CITY OF NEW YORK,

Plaintiff-Respondent.

GERALD D. NELSON, GERALDINE D. N. ACKER and GERTRUDE N. FITZPATRICK, as Successor Trustees under the Will of William Nelson, deceased, and HELEN D. MOLLER,

Defendants-Foreclosed Owners-Appellants.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

JURISDICTIONAL STATEMENT

WILLIAM P. JONES
36 West 44th Street
New York 36, N. Y.
Counsel for [illegible]

INDEX

Table of Cases Cited

Other Authorities Cited

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

Kings County Clerk's Index No. 8700, Year 1951

In the Matter of the

Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York,

LIST OF DELINQUENT TAXES

Sections 10, 11, 12 and 13
Borough of Brooklyn, Action No. 4

Serial No.	Section	Block	Lot
887	12	3831	12

Queens County Clerk's Index No. 3000, Year 1950

In the Matter of the

Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York,

LIST OF DELINQUENT TAXES

Sections 1 and 2
Borough of Queens, Action No. 1

Serial No.	Section	Block	Lot
83	1	78	9

THE CITY OF NEW YORK,

Plaintiff-Respondent.

GERALD D. NELSON, GERALDINE D. N. ACKER and GERTRUDE N. FITZPATRICK, as Successor Trustees under the Will of William Nelson, deceased, and HELEN D. MOLLER,

Defendants-Foreclosed Owners-Appellants.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

JURISDICTIONAL STATEMENT

Introduction

(References to Record are by Folio No.)

Appellants appeal from the final order of the New York Court of Appeals sustaining the validity under

the Fourteenth Amendment to the United States Constitution of the actions of the City of New York in taking appellants' properties by "Foreclosure *In Rem*" actions pursuant to the New York City Administrative Code. Appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

(a) Opinions Below

The memorandum decision of the New York Court of Appeals, dated October 13, 1955, and reported in 309 N. Y. 801; 130 N. E. 2d 602, is annexed as Appendix "A."

The *per curiam* opinion of the New York Court of Appeals, dated July 8, 1955, and reported in 309 N. Y. 94, 96; 127 N. E. 2d 827, is annexed as Appendix "B."

The memorandum decision of the Appellate Division of the New York Supreme Court (2nd Dept.) dated October 11, 1954, and reported in 284 App. Div. 894(3) and 134 N. Y. S. 2d 597, is annexed as Appendix "C."

The opinion of Special Term, Part I, of the New York Supreme Court for the County of Kings (R. 418-420) reported in N. Y. L. J., May 4, 1954, p. 11, col. 8 (not otherwise reported), is annexed as Appendix "D."

(b) Jurisdiction

(i) Pursuant to Title D of Chapter 17 of the New York City Administrative Code, the City of New York proceeded to foreclose by actions *in rem* a tax lien which it held on each of appellants' real properties. The City acquired title to the two properties by reason of appellants' inadvertent failure to redeem or answer in the two foreclosure actions within the time prescribed by the Code. Thereafter appellants brought motions in each of the foreclosure actions for relief from the default judgments, for permission to redeem their properties and to file answers in the actions on the ground, among others, that the action of the City was an unlawful taking of appellants' properties and violated their rights as guaranteed by the Constitution of the United States.

(ii) The New York Court of Appeals made its order of affirmance on July 8, 1955. On appellants' motion for reargument and for amendment of the remittitur, that Court issued its final order on October 13, 1955, denying reargument but amending the remittitur. The notice of appeal was duly served on November 30, 1955 and thereafter filed with the Clerks of Kings and Queens Counties, the former being possessed of the Record herein.

The motion to the New York Court of Appeals for reargument and for amendment of the remittitur having been timely made, October 13, 1955, the date that Court decided that motion measures the time for taking the appeal to this Court. The notice of appeal herein having been served on November 30, 1955 and filed with the Clerk of Kings County on December 1,

1955, the within appeal is timely (*Department of Banking* v. *Pink*, 317 U. S. 264; *Chicago G. W. R. Co.* v. *Basham*, 249 U. S. 164.

(iii) The jurisdiction of the Supreme Court to review the decision of the New York Court of Appeals by direct appeal is conferred by Title 28, U. S. C. Section 1257 (2).

(iv) The following decisions sustain the jurisdiction of the Supreme Court to review the order on direct appeal in this case:

Covey, Committee of Brainard v. *Town of Somers*, (United States Supreme Court Docket No. 380, filed September 9, 1955; order of Supreme Court "noting probable jurisdiction" dated November 7, 1955 [5847-9]; reported below in 308 N. Y. 941; 127 N. E. 2d 90).

Also *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282.

(v) The validity of the action of the City of New York in taking appellants' properties pursuant to the New York City Administrative Code is involved and is claimed by appellants to be repugnant to the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. The statute is Chapter 411 of the Laws of New York, 1948, having been passed by the New York Legislature as an amendment to the Administrative Code of the City of New York, and known thereafter as Title D of Chapter 17 of that Code. The text is set forth as Appendix "E."

(c) Questions Presented

1. Whether the taking by the City of New York of Appellants' two properties herein involved was, on the facts presented in the Record, a deprivation of their property without due process under the Fourteenth Amendment to the United States Constitution?

2. Whether the taking by the City of New York of Appellants' two properties herein involved was, on the facts presented in the Record, a denial of equal protection of the laws under the Fourteenth Amendment to the United States Constitution?

3. Whether Chapter 17, Title D of the Administrative Code of the City of New York, being Chapter 411 of the laws of 1948 of the State of New York is repugnant to the United States Constitution as it was applied by the City of New York in taking Appellants' two properties under the circumstances and on the facts presented in the Record, in that such application results in a deprivation of property without due process and denies Appellants equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution?

(d) Statement of the Case

Appellants are successor trustees of a trust established under the Will of William Nelson, deceased.

The two real properties taken by the City of New York in two *in rem* foreclosure actions were assets of the trust.

The first parcel assessed for $6,000., known as 21-17 45th Avenue, Long Island City, Queens, had been owned in fee by appellants since December 21, 1938. During the entire period of appellants' ownership the real estate taxes were paid (with the exception of the second half of 1948/9), and the property was regularly maintained. Through inadvertence stemming from the defalcations of a trusted bookkeeper the water charges were not paid commencing with the year 1945. On May 22, 1950, the City commenced an action for foreclosure *in rem* for the non-payment of $72.50 of water charges. The City purported to take title on August 22, 1950, and on February 21, 1951, sold the property for $7,000., retaining the entire proceeds. For the years thereafter the City directed real estate tax bills to appellants which appellants paid and the City accepted. Appellants had no actual notice of the foreclosure action and did not discover the loss of this property until November 1952. (R. 275-291)

The second and much more valuable of appellants' two properties is known as 525 Powell Street, Brooklyn (Kings County) and is assessed for $46,000. Appellants had owned it in fee since October 30, 1934, and all the real estate taxes were paid, excepting the second half of 1948/9. As in the case above the property was well maintained and produced a reasonable return on investment from the $9,275. gross annual rents.

Like the case above water charges were unpaid from 1945. On December 17, 1951 the City commenced an action for foreclosure *in rem* for the non-payment of $814.50 of water charges. The City pur-

ported to take title to the Powell Street property on May 19, 1952; it still has title and possession and presumably has been collecting the $9,275. gross annual rents.

As in the instance above appellants had no actual notice of the foreclosure actions and were unaware of the loss of their Powell Street property until November 1952 (R. 40-89).

After vainly offering to pay all tax arrears, with interest and penalties due the City (R. 51) the present appellants on February 4, 1953, commenced an action in the Supreme Court pursuant to Article 15 of the New York Real Property Law to cancel the deed of the Powell Street property to the City of New York and for the recovery of the proceeds of the sale of the 45th Avenue property. That action was based on the ground, among others, that the action of the City was invalid and violated rights guaranteed appellants by the Constitution of the United States.

From the judgment entered on the order granting the City's motion for summary judgment and for judgment on the pleadings made in that action an appeal was taken to the Appellate Division of the New York Supreme Court, Second Department. On February 1, 1954, the order below was affirmed in a decision which was stated to be without prejudice to the then plaintiffs bringing motions in the foreclosure actions to open the default judgments.

That action, while no part of the present proceeding, is relevant here to show appellants' uninterrupted diligence to recover their properties once their loss was discovered in November 1952.

How the Federal Question Is Presented

On March 16, 1954, appellants brought motions in the two foreclosure actions in Special Term, Part I of the New York Supreme Court for Kings County to open the default judgments.

One of the specific grounds for each motion was as follows (R. 36, 37, 272):

> "(3) that the application by the City of New York of Title D of Chapter 17 of the Administrative Code for collection of tax liens on defendants' property, under all the circumstances of this case, violates defendants' rights as guaranteed by the Constitutions of the United States and of the State of New York."

In the affidavits of William P. Jones in support of appellants' motions in the court of first instance the federal question was again specifically presented (R. 90, 113, 116):

> "12. Under all the circumstances of this case the City's application of the in rem procedure to collect two relatively insignificant water charges on defendants' two properties—was an abuse of the purpose of the statute, was contrary to the intent of the Legislature, and violated defendants' rights under the Constitutions of the United States and of the State of New York.
>
> "13. While Title D of Chapter 17 of the Administrative Code of the City of New York may be generally constitutional, it is defendants' position that its application in this case was con-

fiscatory, amounting to taking private property for public use without just compensation."

"24. In view of the clear intent of the Legislature, the shocking disparity between the amount of the City's just charges and the value of the confiscated properties, and in light of all of the above circumstances, the use of the in rem procedure in this case was flagrant abuse of the taxing power to accomplish a taking of private property for public use without just compensation, and a deprivation of property without due process of law."

"26. While the general constitutionality of Title D might be conceded defendants challenge the constitutionality of its application to the circumstances of this case. For this reason deponent believes defendants' application is novel since deponent has not found any case where a taxpayer has sought relief specifically under §D17-23.0 or §166-1 of the Tax Law."

The invalidity of the City's action in violation of appellants' rights under the Federal Constitution was urged upon the court of first instance in appellants' brief and upon the oral argument of the motions. Since the court of first instance (Special Term, Part I) denied the motions "in all respects" (R. 24) the action of the City in taking appellants' properties was held to be valid, not repugnant to the Federal Constitution and not violative of appellants' rights thereunder.

Likewise, these points were presented in the record on appeal to the Appellate Division of the New York Supreme Court and to the New York Court of Ap-

peals and were urged upon those courts in appellants' briefs and in counsel's oral arguments. In each court the orders below were affirmed.

On the motion for reargument in the Court of Appeals and for amendment of the remittitur, that Court denied reargument but amended the remittitur to show that upon the appeal

> "there were presented and necessarily passed upon questions under the Constitution of the United States, as follows: The appellants argued that the taking by the City of New York of the property here involved was, on this record, a taking of private property for public use without just compensation under the Fifth Amendment, and deprived them of due process and equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States. The Court of Appeals held that the rights of defendants under the Fifth and Fourteenth Amendments of the Constitution of the United States had not been violated or denied."

(Appendix A, page 15, *infra; Covey, etc.* v. *Town of Somers*, page 4, *supra.*)

(e) The Questions Are Substantial

It is respectfully submitted that the questions herein presented are so substantial as to require plenary consideration with briefs on the merits and oral argument for their resolution.

When the City of New York by foreclosure *in rem* confiscated appellants' properties assessed at $52,000.

to collect water charges of $887. there was available for collecting such minor liens the normal, in such cases, and then existing alternative method provided by Title A, Chapter 17 of the Administrative Code of the City of New York. Under Title A confiscation of the property is impossible; ultimate collection of the tax lien must be by sale of the property as in an action to foreclose a mortgage, with consequent distribution of surplus proceeds (if any) to those interests entitled (R. 100-109).

It was the capricious choice of a City tax official, in abuse of the legitimate purpose of the statute, in applying the *in rem* collection method on the facts of this case which was an invalid act depriving appellants of due process and equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution (*Yick Wo* v. *Hopkins,* 118 U. S. 356).

The City's application of its foreclosure *in rem* statute and its prototype, Title 3 of the New York State Tax Law has resulted in frequent forfeitures in New York City and in taxing districts elsewhere in New York State. Properties worth vastly more than the "foreclosed" lien have been confiscated. (See *Covey etc.* v. *Town of Somers,* page 4, *supra,* where an incompetent's property worth $6,500. was taken for arrears of $480.) The present case, however, involves the grossest disparity of which there is any *in rem* record.

New York City's *in rem* statute, dispensing with sales of properties foreclosed for tax liens, seems to be an attempted reversion to the ancient practice

of "strict" mortgage foreclosure, the abuse of which was well known when the Federal Constitution was adopted, and which, when the Fourteenth Amendment was ratified, had already been superseded everywhere, either by the development of equitable principles or by statute, by the requirement of public sales.

This Court has not passed on the constitutionality of either of the above statutes nor on the validity under the Federal Constitution of any challenged acts of any tax authority taken thereunder. Certiorari was denied in *Echo Bay Waterfront Corp.* v. *New Rochelle,* 326 U. S. 720 (No. 104); 294 N. Y. 678 and 771; 61 N. E. 2d 779.

The constitutionality of Title 3 of the New York State Tax Law, the prototype of the City's *in rem* foreclosure statute, has, however, been seriously doubted by the New York Court of Appeals in *Lynbrook Gardens, Inc.* v. *Ullman,* 291 N. Y. 472; 53 N. E. 2d 353. In that case a purchaser refused to accept a deed on the ground that the seller's title was defective since it derived from a tax district through a foreclosure *in rem* under Title 3 of the New York Tax Law and that the statute was invalid under the United States Constitution. The Court of Appeals refused to decree specific performance, recognizing that the statute had been challenged on substantial grounds. The Court said at page 477:

> "Even though this court were to sustain the validity of the statute, the Supreme Court of the United States might still reach a different conclusion. A subsequent purchaser could at any time reject title on that ground and litigate that

question in a different forum. A title which can be challenged in that manner is not marketable and decree of specific performance may not be rendered under such circumstances."

The result of this situation is to cast grave doubt on the marketability of any title derived under New York City's foreclosure *in rem* statute, as well as under its prototype, Title 3 of the New York State Tax Law.

For the foregoing reasons, we believe that the Federal questions presented by this appeal are substantial and that they are of broad public importance.

Respectfully submitted,

WILLIAM P. JONES
36 West 44th Street
New York 36, N. Y.

APPENDIX A

MEMORANDUM DECISION

309 N. Y. 801; 130 N. E. 2d 602

CITY OF NEW YORK,

Respondent,

v.

GERALD D. NELSON et al., as Successor Trustees under the Will of William Nelson, Deceased, et al.,

Appellants.

COURT OF APPEALS OF NEW YORK

October 13, 1955.

Motion for reargument denied.

Motion to amend remittitur granted. Return of remittitur requested and, when returned, it will be amended by adding thereto the following: Upon the appeal herein there were presented and necessarily passed upon questions under the Constitution of the United States, as follows: The appellants argued that the taking by the City of New York of the property here involved was, on this record, a taking of private property for public use without just compensation under the Fifth Amendment, and deprived them of due process and equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States. The Court of Appeals

held that the rights of defendants under the Fifth and Fourteenth Amendments of the Constitution of the United States had not been violated or denied. (See *City of New York* v. *Nelson*, 309 N. Y. 94.)

Motion to stay the City of New York from proceeding with the sale or disposition of the subject property granted to and including November 12, 1955, to enable appellants to apply to the Supreme Court of the United States or to a Justice thereof for a stay in connection with an application for a writ of certiorari.

APPENDIX A (1)

THE ORDER APPEALED FROM

STATE OF NEW YORK,

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the thirteenth day of October, A. D. 1955.

Present, HON. ALBERT CONWAY, *Chief Judge*, presiding.

Mo. No. 397

In the Matter of

the Foreclosure of Tax Liens Pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York, &c.

---

and another proceeding

THE CITY OF NEW YORK,

Respondent,

GERALD D. NELSON, & ors., as Successor Trustees under the Will of William Nelson, Deceased, & ano.,

Appellants.

A motion for reargument or, in the alternative, to amend the remittitur in the above cause having been heretofore made upon the part of the appellants herein

and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion, insofar as it seeks reargument, be and the same hereby is denied, and it is

FURTHER ORDERED, that the said motion, insofar as it seeks to amend the remittitur, be and the same hereby is granted. Return of the remittitur requested and, when returned, it will be amended by adding thereto the following:

> Upon the appeal herein there were presented and necessarily passed upon questions under the Constitution of the United States, as follows: The appellants argued that the taking by the City of New York of the property here involved was, on this record, a taking of private property for public use without just compensation under the Fifth Amendment, and deprived them of due process and equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States. The Court of Appeals held that the rights of the defendants under the Fifth and Fourteenth Amendments of the Constitution of the United States had not been violated or denied. (See *City of New York* v. *Nelson*, 309 N. Y. 94.)

AND the Supreme Court, Kings County, is hereby requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

A copy

(SEAL)

GEARON KIMBALL
Deputy Clerk

APPENDIX B

PER CURIAM OPINION

309 N. Y. 94, 96; 127 N. E. 2d 827

CITY OF NEW YORK,

Respondent,

v.

GERALD D. NELSON et al., as Successor Trustees under the Will of William Nelson, deceased, et al.,

Appellants.

COURT OF APPEALS OF NEW YORK

July 8, 1955.

APPEAL, by permission of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the second judicial department, entered October 11, 1954, which unanimously affirmed (1) an order made at a Special Term of the Supreme Court held in Kings County (DI GIOVANNA, *J.*), and entered in Queens County, denying a motion by defendants for relief from a judgment of foreclosure in rem entered on default, and (2) an order of said court entered in Kings County denying a similar motion for relief from another judgment of foreclosure entered on default.

WILLIAM P. JONES and WATSON WASHBURN for appellants.

* * * *

V. The use of the in rem statute in this particular case was unconstitutional.

* * * *

Per Curiam. The order appealed from should be affirmed without costs.

Appendix B

This is indeed a hard case. Defendants acquired title to the Powell Street property in 1934 and to the 45th Avenue property in 1938, and paid the real estate taxes due thereon. For the nonpayment of water charges, the city acquired title to these properties in an in rem tax foreclosure sale under title D of chapter 17 of the Administrative Code of the City of New York, as follows:

Property	Water Arrears	Assessed Value
45th Avenue 4-story brick and stone rooming house	$72.50	Assessed by the City at $6,000 and resold by it for $7,000 retaining the entire proceeds.
Powell Street 4-story apartment house with 28 apartments	$814.50	Assessed by the City at $46,000; with a gross annual rent income of $9,275.

Thus, for total arrears of $887, the city acquired properties assessed at $52,000, one of which parcels was resold in excess of its assessed valuation.

The nonpayment of the water charges was due to the default of a trusted bookkeeper, and was discovered when he attempted suicide. The city continued to bill the estate of which plaintiffs are trustees for the real estate taxes on the 45th Avenue property for two years after it had acquired title.

Unfortunately, the power to afford relief here is not confided to the courts. The result suggests the need of legislation liberalizing the right of redemption, or giving to city officials the power to ameliorate such extreme hardships in appropriate cases.

Conway, *Ch. J.*, Desmond, Dye, Fuld, Froessel and Van Voorhis, *JJ.*, concur; Burke, *J.*, taking no part.

Order affirmed.

APPENDIX C

MEMORANDUM DECISION

284 App. Div. 894(3); 134 N. Y. S. 2d 597

CITY OF NEW YORK,

Respondent,

v.

GERALD D. NELSON et al., as Successor Trustees under the Will of William Nelson, Deceased, et al.,

Appellants.

APPELLATE DIVISION OF THE NEW YORK SUPREME COURT
(2nd DEPARTMENT.)

October 11, 1954

The former owners of two parcels of real property, title to which had been acquired by respondent through in rem foreclosure, appeal from two orders denying their motions, pursuant to section 108 of the Civil Practice Act, to relieve them from default judgments entered in the foreclosure actions, and for other relief. Orders affirmed, without costs. (*City of Peekskill* v. *Perry*, 272 App. Div. 940; *City of New York* v. *Lynch*, 281 App. Div. 1038, affd. 306 N. Y. 809; *Town of Somers* v. *Covey*, 283 App. Div. 883.) Nolan, *P. J.*, Adel, Schmidt, Beldock and Murphy, *JJ.*, concur.

APPENDIX D

OPINION OF SPECIAL TERM, PART I, SUPREME COURT OF NEW YORK, KINGS COUNTY

New York Law Journal — May 4, 1954

In re Foreclosure of Tax Liens (Estate of William Nelson)—Both motions are treated as one. Application for an order pursuant to Civil Practice Act, section 108, relieving the defendants, the foreclosed owners of the respective fee titles, from default judgments of foreclosure in rem and permitting the defendants to redeem the parcels in question by payment of all tax liens, with interest, or permitting the defendants to interpose answers in the above entitled actions. Upon the record herein it appears that all proceedings in these actions have been in accordance with Title D of Chapter 17 of the Administrative Code of the City of New York. In particular, the trustees admit mailing by the City of New York of the notice of foreclosure to them at the address of the office maintained by them and the receipt of such notice by their trusted employee. The failure of the trustees to receive direct notice of the in rem foreclosure is attributable to their misplaced confidence in their trusted bookkeeper and agent, who allegedly concealed all notices received from the city to cover up his defalcations. The provisions of Administrative Code, Title D, section 17-6.0, preclude the court from extending the time to answer or redeem (*Matter of Foreclosure of Tax Liens, Town of Somers* [Covey], App. Div., 2d Dept., N. Y. L. J., April 13, 1954, p. 10; *Hawley* v. *City of N. Y.*, App. Div., 2d Dept., N. Y. L. J., April 13, 1954, p. 10; *City of N. Y.* v. *Lynch*, 281 App. Div., 1038, aff'd by the Court of Appeals, N. Y. L. J., March 8, 1954, p. 6). Both motions are denied in all respects. Settle order on notice.

APPENDIX E

(Applicable Statute)

TITLE D, CHAPTER 17, ADMINISTRATIVE CODE OF THE CITY OF NEW YORK

Foreclosure by Action in Rem

§ D17–1.0 Definitions.—Whenever used in this title the following terms shall mean:

1. "Tax lien." Any unpaid tax, assessment or water rent and interest or penalty thereon, which is a lien on real property whether or not the same be evidenced by a transfer of tax lien or any other written instrument.

2. "Court." The supreme court.

§ D17–2.0 Applicability of procedure of foreclosure in rem.—a. The provisions of this title shall be applicable only to tax liens owned by the city.

b. The provisions of this title shall not affect any existing remedy or procedure for the enforcement or foreclosure of tax liens provided for in this code or any other law, but the remedy provided herein for foreclosure by action in rem shall be in addition to any other remedies or procedures provided by any general, special or local law.

c. The provisions of this title shall not affect pending actions or proceedings, provided, however, that any pending action or proceeding for the enforcement or foreclosure of tax liens may be discontinued, and a new action may be instituted pursuant to the provisions of this title, in respect to any such tax lien.

§ D17–3.0 Jurisdiction.—The supreme court shall have jurisdiction of actions authorized by this title.

Appendix E

§ D17–4.0 FORECLOSURE BY ACTION IN REM.—Whenever it shall appear that a tax lien which has been due and unpaid for a period of at least four years from the date on which the tax, assessment or other legal charge represented thereby became a lien, such tax lien, except as otherwise provided by this title, may be summarily foreclosed in the manner provided in this title, notwithstanding the provisions of any general, special or local law and notwithstanding any omission to hold a tax sale prior to such foreclosure. Ownership of a transfer of tax lien or of a tax sale certificate or of any other instrument evidencing such tax lien by the city shall be evidence of the fact that the tax, assessment or other legal charge represented thereby have not been paid to the city or assigned by it.

§ D17–5.0 FILING OF LIST OF DELINQUENT TAXES.—The city treasurer shall file in the office of the clerk of the county in which the property subject to such tax liens is situated, a list of parcels of property in such county affected by unpaid tax liens held and owned by the city which on the date of filing shall have been unpaid for a period of at least four years or more after the date when the tax, assessment or other legal charge represented thereby became a lien and the city treasurer shall from time to time thereafter continue to file additional lists of parcels of property affected by unpaid tax liens held and owned by the city which on the respective dates of filing shall have been unpaid for a period of at least four years or more after the date when the tax, assessment or other legal charge represented thereby became a lien. Each such list shall comprise all such parcels within a particular section or ward designated on the tax maps of the city, except those parcels excluded from such lists as hereinafter provided. Before filing any list of parcels of property, the city treasurer with the approval of the

board of estimate, may exclude particular parcels therefrom. The city treasurer when requesting approval of the exclusion of any particular parcel, shall state the reasons therefor in writing. No parcel shall be excluded from any such list for any reason other than the following: (1) that a meritorious question has been raised by a person having an interest in such parcel as to the validity of the tax lien affecting such parcel, or (2) that the city treasurer before the effective date hereof had agreed to accept payment of delinquent taxes, assessments or other legal charges in instalments of at least two years of such arrears with each year of current taxes, assessments or other legal charges and that there has been no default in such agreement, or (3) that an agreement has been duly made and executed and filed with the city treasurer for the payment of such delinquent taxes, assessments or other legal charges in instalments, the first of which shall be in an amount equal to at least twenty-five per centum of such arrears payable upon the date of making and filing with the city treasurer of the instalment agreement, and the balance of which shall be in amounts equal to at least two years of such arrears and payable with each year of current taxes, assessments or other legal charges and that there has been no default in such agreement, or (4) that within two years last past the city treasurer had sold or the city had assigned a tax lien owned and held by the city to a person who had not completed all of the proceedings necessary to enforce such tax lien. The city treasurer shall transmit a list of all parcels within the particular section or ward selected which are affected by tax liens which shall have been unpaid for a period of at least four years and an additional list which shall designate the parcels on the first list which should be excluded. The board of estimate upon receipt of such lists shall cause them to be published in the City Record. The list covering the parcels to be excluded shall set forth

as to each such parcel, the reason for exclusion. Such publication shall also contain a general description of the boundaries of the section or ward affected, but need not contain measurements or directions. Such list of all parcels and such additional list designating the parcels to be excluded from the first list shall not be approved at the meeting of the board of estimate at which they appear on the calendar for the first time, nor shall such board approve the exclusion of any parcel at any succeeding meeting unless one week has elapsed after the meeting when such exclusion was first submitted for approval. The approval of such exclusion by the board of estimate shall be by resolution recorded in its minutes, stating the reason therefor. All parcels included in any list shall be numbered serially. The city treasurer shall file a copy of each such list, certified by the county clerk, in his main office and in each branch office and in the office of the corporation counsel. Such lists shall be known and designated as the "List of Delinquent Taxes" and shall bear the following caption: "Supreme Court, ...County. In the matter of foreclosure of tax liens pursuant to title D of chapter seventeen of the administrative code of the city of New York. List of delinquent taxes." Where the list comprises parcels in a particular section or ward the caption shall also refer to such section or ward.

The inadvertent failure of the city treasurer to include all parcels in such list, or where more than one list is filed, all such parcels in the list for the designated section or ward shall not affect the validity of any proceeding brought hereunder. Each such list shall also contain as to each parcel, the following:

(a) A brief description sufficient to identify each parcel affected by such tax lien. A description by stating the lot, block and section or ward number, street and street number, if there be such, or other identification

numbers of any parcel upon a tax map, or a lot number or other identification number of any tract, the map of which is filed in the county clerk's or register's office, shall be a sufficient description. An omission or error in the designation of a street or street number shall not affect the validity of any proceeding brought hereunder, either as to such parcel or any other parcels.

(b) The name of the last known owner of such parcel as the same appears on the assessment roll for the year preceding the calendar year in which such list is filed.

(c) A statement of the amount of each tax lien upon such parcel including those which shall have been due and unpaid for less than four years together with the date or dates from which and the rate and rates at which interest and penalties shall be computed.

Such list of delinquent taxes shall be verified by the affidavit of the city treasurer. The filing of such list of delinquent taxes in the office of the clerk of the county in which the property subject to such tax liens is situated shall constitute and have the same force and effect as the filing and recording in said office of an individual and separate notice of pendency of action and as the filing in the supreme court in such county of an individual and separate complaint by the city against the real property therein described, to enforce the payment of the delinquent taxes, assessments or other lawful charges which have accumulated and become liens against such property.

Each county clerk with whom such list of delinquent taxes is filed shall index it in a separate book kept for that purpose which shall constitute due filing, recording and indexing of such notice in lieu of any other requirement under section one hundred twenty-two of the civil practice act or otherwise.

§ D17-6.0 Public notice of foreclosure.—Upon the filing of such list in the office of the county clerk, the city treas-

urer forthwith shall cause a notice of foreclosure to be published at least once a week for six successive weeks in the City Record and in two newspapers designated by the city treasurer and published within the county in which the property affected by such list is located, except that in the county of Richmond one of the newspapers designated may be published in the county of New York or in the county of Kings. In New York and Bronx counties the newspapers to be designated for the publication of such notice or any other public notice required pursuant to this article shall be the daily law journal designated by the justices of the appellate division of the first judicial department and another newspaper designated by said justices pursuant to the provisions of subdivisions one and two of section ninety-seven of the judiciary law. Such notice shall be in substantially the following form: Supreme Court, ... County.

NOTICE OF FORECLOSURE OF TAX LIENS BY THE CITY OF NEW YORK IN THE BOROUGH OF ..... (here insert name of Borough, and section or ward number and general description giving boundaries of section or ward. Such description need not contain measurements or directions.)

BY ACTION IN REM

Please take notice that on the....day of..... the Treasurer of the City of New York, pursuant to law, filed with the Clerk of.....County, a list of parcels of property affected by unpaid tax liens, held and owned by said City of New York which on the....day of....., had been unpaid for a period of at least four years after the date when the tax, assessment, or other legal charge became a lien. Said list contains as to each such parcel, (a) a brief description of the property affected by such tax lien, (b) the name of the last

known owner of such property as the same appears on the assessment roll for the last calendar year or a statement that the owner is unknown if such be the case, (c) a statement of the amount of such tax lien upon such parcel, including those which shall have been due and unpaid for less than four years together with the date or dates from which, and the rate or rates at which interest and penalties thereon shall be computed.

All persons having or claiming to have an interest in the real property described in such list of delinquent taxes are hereby notified that the filing of such list of delinquent taxes constitutes the commencement by the city of New York of an action in the Supreme Court, ... County to foreclose the tax liens therein described by a foreclosure proceeding in rem and that such list constitutes a notice of pendency of action and a complaint by the City of New York against each piece or parcel of land therein described to enforce the payment of such tax liens. Such action is brought against the real property only and is to foreclose the tax liens described in such list.

No personal judgment shall be entered herein for such taxes, assessments or other legal charges or any part thereof.

This notice is directed to all persons having or claiming to have an interest in the real property described in such list of delinquent taxes and such persons are hereby notified further that a certified copy of such list of delinquent taxes has been filed in the main office of the city treasurer in the Borough of Manhattan and in the office of the city treasurer at ....., in the Borough of ....., and will remain open for public inspection up to and including the .... day of ..... (here insert a date at least seven weeks from the date of the first publication of this notice,) which date is hereby fixed as the last date for redemption.

And take further notice that any person having or

claiming to have an interest in any such parcel and the legal right thereto may on or before said date redeem the same by paying to the city treasurer the amount of all such unpaid tax liens thereon and in addition thereto all interest and penalties which are a lien against such real property computed to and including the date of redemption. In the event that such taxes are paid by a person other than the record owner of such property, the person so paying shall be entitled to have the tax liens affected thereby satisfied of record or to receive an assignment of such tax liens evidenced by a proper written instrument.

Every person having any right, title or interest in or lien upon any parcel described in such list of delinquent taxes may serve a duly verified answer upon the corporation counsel setting forth in detail the nature and amount of his interest or lien and any defense or objection to the foreclosure. Such answer must be filed in the office of the county clerk in the county in which such real property is located and served upon the corporation counsel at any time after the first date of publication but not later than twenty days after the date above mentioned as the last day for redemption. In the event of failure to redeem or answer by any person having the right to redeem or answer, such person shall be forever barred and foreclosed of all his right, title and interest and equity of redemption in and to the parcel described in such list of delinquent taxes and a judgment in foreclosure may be taken by default.

.....

Treasurer

.....

Corporation Counsel

Office and Post Office Address

.....

Borough of Manhattan

City of New York"

On or before the date of the first publication of the notice above set forth, the treasurer shall cause a copy of such notice to be mailed to the last known address of each owner of property affected thereby, as the same appears upon the records in the office of the city treasurer, and in the event that the name or address of such owner does not appear in such records the city treasurer shall so state in an affidavit which shall be filed in the office of the county clerk and the treasurer shall cause a copy of such notice to be posted in the office of the treasurer, in the county court house of the county in which the property subject to such tax lien is situated and three other conspicuous places in the borough in which the affected properties are located. The treasurer shall cause to be inserted with or attached to such notice a statement substantially as follows: "To the party to whom the enclosed notice is addressed: You are the presumptive owner or lienor of one or more of the parcels mentioned and described in the list referred to in the enclosed notice.

Unless the taxes and assessments and all other legal charges are paid, or an answer interposed, as provided by statute, the ownership of said property will in due course pass to the city of New York as provided by the Administrative Code of the City of New York.

Dated .....

.....

Treasurer".

§ D17-7.0 NOTICE TO MORTGAGEE OR LIENOR.—Any owner of real property, any mortgagee thereof, or any person having a lien or claim thereon, or interest therein may file with the city treasurer a notice stating his name, residence and post office address and a description of the parcel in which such person has an interest, which notice shall continue in effect for the purposes of this section

for a period of ten years, unless earlier canceled by such person. The city treasurer shall mail to each such person forthwith after the completion and filing of the list of delinquent taxes as herein provided, a copy of each notice required under this title and affecting such parcel. The failure of the city treasurer to mail such notice as herein provided shall not affect the validity of any proceeding brought pursuant to this title.

§ D17-8.0 FILING OF AFFIDAVITS.—All affidavits of filing, publication, posting, mailing or other acts required by this title shall be made by the person or persons performing such acts and shall be filed in the office of the county clerk of the county in which the property subject to such tax lien is situated and shall together with all other documents required by this title to be filed in the office of such county clerk, constitute and become a part of the judgment roll in such foreclosure action.

§ D17-9.0 TRIAL OF ISSUES.—If a duly verified answer is served upon the corporation counsel within the period mentioned in the notice published pursuant to section D17-6.0 the court shall summarily hear and determine the issues raised by the complaint and answer in the same manner and under the same rules as it hears and determines other actions, except as in this title otherwise provided. Upon such trial, proof that such tax was paid, together with any interest or penalty which may have been due, or that the property was not subject to tax shall constitute a complete defense. Whenever an answer is interposed as herein provided, the defendant shall have an absolute right to the severance of the action as to any parcel or parcels of land in which he has an interest, upon written demand therefor filed with or made a part of his answer.

Appendix E

§ D17-10.0 PREFERENCE OVER OTHER ACTIONS.—Any action brought pursuant to this title shall be given preference over all other causes and actions, and no such action shall be referred except to an official referee and the supreme court is hereby given jurisdiction to make such reference.

§ D17-11.0 PRESUMPTION OF VALIDITY.—It shall not be necessary for the city to plead or prove the various steps, procedures and notices for the assessment and levy of the taxes, assessments or other lawful charges against the lands set forth in the list of delinquent taxes and all such taxes, assessments or other lawful charges and the lien thereof shall be presumed to be valid. A defendant alleging any jurisdictional defect or invalidity in the tax or in the sale thereof must particularly specify in his answer such jurisdictional defect or invalidity and must affirmatively establish such defense. The provisions of this title shall apply to and be valid and effective with respect to all defendants even though one or more of them be infants, incompetents, absentees or non-residents of the state of New York.

§ D17-12.0 FINAL JUDGMENT.—a. The court shall have full power to determine and enforce in all respects the priorities, rights, claims and demands of the several parties to said action, as the same shall exist according to law, including the priorities, rights, claims and demands of the defendants as between themselves, and in a proper case to direct a sale of such lands and the distribution or other disposition of the proceeds of the sale. The court shall further determine upon proof and shall make finding upon such proof whether there has been due compliance by the city with the provisions of this title.

b. Any sale directed by the court shall be at public auction by the city treasurer. Public notice thereof shall

be given by publication in the manner provided in section nine hundred eighty-six of the civil practice act. The city treasurer shall receive no fee or compensation for such service. The description of the parcel offered for sale in such notice shall be that contained in the list of delinquent taxes with such other description, if any, as the court may direct.

c. In directing any conveyance pursuant to this title, the judgment shall direct the city treasurer to prepare and execute a deed conveying title to the parcel or parcels concerned. Said title shall be full and complete. Upon the execution of such deed the grantee shall be seized of an estate in fee simple absolute in such parcel unless expressly made subject to tax liens accrued or accruing subsequent to those contained in the list of delinquent taxes, and all persons, including the state of New York, infants, incompetents, absentees and non-residents, except the city, who may have had any right, title, interest, claim, lien or equity of redemption in or upon such parcel, shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption.

d. The court shall make a final judgment awarding to the city the possession of any parcel described in the list of delinquent taxes not redeemed as provided in this title and as to which no answer is interposed as provided herein. In addition thereto such judgment shall contain a direction to the city treasurer to prepare, execute and cause to be recorded a deed conveying to the city full and complete title to such lands subject only to tax liens accrued or accruing subsequent to those contained in the list of delinquent taxes. Upon the execution of such deed, the city shall be seized of an estate in fee simple absolute in such land and all persons, including the state of New York, infants, incompetents, absentees and non-residents who may have had any right, title, interest, claim, lien or

equity of redemption in or upon such lands shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption.

§ D17–13.0 WITHDRAWAL OF PARCELS FROM FORECLOSURE.—The city treasurer may at any time prior to final judgment withdraw any parcel from a proceeding under this title with the approval by resolution of the board of estimate stating the reason therefor. No parcel shall be withdrawn from such proceeding except for one of the reasons set forth in section D17–5.0 of this title as a reason for exclusion of a parcel from a list of delinquent taxes to be filed. Upon such withdrawal the tax liens on any parcel so withdrawn shall be and remain the same as if no action had been instituted and the city treasurer shall issue a certificate of withdrawal which shall be filed with the county clerk who shall note the word "withdrawn" and the date of such filing opposite the description of such parcel on the list. Such certificate may include one or more parcels appearing on any list. Such notice shall operate to cancel the notice of pendency of action with respect to any such parcel.

§ D17–14.0 RIGHT OF REDEMPTION NOT DIMINISHED.—The period of time in which any owner of, or other person having an interest in a parcel of property may redeem from a sale of a transfer of tax lien is not hereby diminished nor shall such period of time be diminished by the commencement of any action brought pursuant to this title.

§ D17–15.0 PRIORITY OF LIENS.—Tax liens shall rank in priority as may now, or as may hereafter, be provided by law.

§ D17–16.0 MAILING TAX BILLS.—It shall be the duty of the city treasurer, upon receipt of the assessment roll and

tax bills to the owners of property assessed so far as such owners and their addresses are known. But the failure of the city treasurer to mail such tax bills shall not invalidate or otherwise affect such tax nor prevent the accruing of any interest or penalty imposed for the non-payment thereof, nor prevent or stay proceedings under this title, nor effect the title of the plaintiff or purchaser under such proceedings.

§ D17-17.0 REGISTERING OWNER, MORTGAGEE, ET CETERA.—The owner of property liable to assessment, a mortgagee thereof, or a person having a lien or claim thereon, may file with the city treasurer a notice stating his name and post-office address, a description of the premises by reference to section or ward, block and lot numbers on the tax map, which notice shall continue in effect for the purposes of this section for the period of ten years, unless earlier cancelled by such person. Service of notice or process shall be made upon such persons who have filed a notice in respect to such premises. Such service may be made personally or by mail to the address designated in said notice. The failure to receive such notice as herein provided shall not effect the validity of any action or proceeding brought pursuant to this title.

§ D17-18.0 WRIT OF ASSISTANCE.—The city, after acquiring title to premises under and pursuant to the terms and provisions of this title, shall be entitled to a writ of assistance, with the same force and effect as if the city had acquired the property by virtue of a mortgage foreclosure.

§ D17-19.0 CONSOLIDATION OF ACTIONS.—Actions or proceedings pending in the courts, or otherwise, to cancel a sale of a tax lien on lands a lien upon which is being foreclosed by action under this title, shall be terminated

upon the institution of a foreclosure action pursuant to this title, and the rights and remedies of the parties in interest to such pending actions or proceedings shall be determined by the court in such foreclosure action.

§ D17-20.0 LANDS HELD FOR PUBLIC USE; RIGHT OF SALE.—Whenever the city shall become vested with the title to lands by virtue of a foreclosure proceeding brought pursuant to the provisions of this title, such lands shall, unless actually used for other than municipal purposes, be deemed to be held by the city for a public use but for a period of not more than three years from the date of the final judgment. The city is hereby authorized to sell and convey such lands in the manner provided by law for the sale and conveyance of other real property held and owned by the city and not otherwise.

§ D17-21.0 CERTIFICATE OF SALE AS EVIDENCE.—The transfer of tax lien or any other written instrument representing a tax lien shall be presumptive evidence in all courts in all proceedings under this title by and against the purchaser and his representatives, heirs and assigns, of the truth of the statements therein, of the title of the purchaser to the property therein described, and of the regularity and validity of all proceedings had in reference to the taxes, assessments or other legal charges for the non-payment of which the tax lien was sold and the sale thereof. After two years from the issuance of such certificate or other written instrument, no evidence shall be admissible in any court in a proceeding under this title to rebut such presumption unless the holder thereof shall have procured such transfer of tax lien or such other written instrument by fraud or had previous knowledge that it was fraudulently made or procured.

§ D17-22.0 DEED IN LIEU OF FORECLOSURE.—The city may when authorized by resolution of the board of estimate and in lieu of prosecuting an action to foreclose a tax lien on any parcel pursuant to this title accept a conveyance of the interest of any person having any right, title, interest, claim, lien or equity of redemption in or to such parcel.

§ D17-23.0 SEVERABILITY OF PROVISION.—The powers granted and the duties imposed by this title and the applicability thereof to any persons, the city or circumstances shall be construed to be independent and severable and if any one or more sections, clauses, sentences or parts of this title or the applicability thereof to any persons, the city or circumstances shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof or the applicability thereof to other persons or circumstances, but shall be confined in its operation to the specific provisions so held unconstitutional and invalid and to the persons and circumstances affected thereby.

§ D17-24.0 SALES AND FORECLOSURES OF TAX LIENS. Notwithstanding any of the provisions of this title the city may continue to sell tax liens, transfer the same to purchasers and become the purchaser at such sales of tax liens in the manner provided by this chapter.

§ 2. This act shall take effect on the first day of July, nineteen hundred forty-eight.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. [redacted] 30

Kings County Clerk's Index No. 8700, Year 1951

In the Matter of the

Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York,

LIST OF DELINQUENT TAXES

Sections 10, 11, 12 and 13
Borough of Brooklyn, Action No. 4

Serial No.	Section	Block	Lot
887	12	3831	12

Queens County Clerk's Index No. 3000, Year 1950

In the Matter of the

Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York,

LIST OF DELINQUENT TAXES

Sections 1 and 2
Borough of Queens, Action No. 1

Serial No.	Section	Block	Lot
83	1	78	9

THE CITY OF NEW YORK,

Appellee,

GERALD D. NELSON, GERALDINE D. N. ACKER and GERTRUDE N. FITZPATRICK, as Successor Trustees under the W ll of William Nelson, deceased, and HELEN D. MOLLER,

Appellants.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

APPELLANTS' REPLY TO MOTION TO DISMISS

WILLIAM P. JONES
36 West 44th Street
New York 36, N. Y.
Counsel for Appellants.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 636

Kings County Clerk's Index No. 8700, Year 1951

In the Matter of the

Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York,

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APPELLANTS' REPLY TO MOTION TO DISMISS

(References to Record are by Folio No.)

1. Re: Appellee's argument that the appeal does not present substantial questions.

New York City's *In Rem* foreclosure statute, Title D of its administrative code, has never been held constitutional, nor has its prototype, Title 3 of the New York State Tax Law, notwithstanding appellee's statement at page 6 of its motion. This Court denied certiorari in *City of New Rochelle* v. *Echo Bay Waterfront Corp.*, 326 U. S. 720, and *Lynbrook Gardens* v. *Ullman*, 322 U. S. 742. The denial of certiorari does not indicate that this Court considered or passed on the constitutional questions (*United States* v. *Carver*, 260 U. S. 482).

The doubt overhanging the constitutionality of the New York *In Rem* statutes is even more real today than when the *Lynbrook* case was decided. The constitutionality of the State *In Rem* law is now to be tested in this Court as applied to the particular facts in *Covey, Committee of Brainard* v. *Town of Somers*, docket No. 380 ("probable jurisdiction" noted by order of this Court dated November 7, 1955). The appeal at bar would test the constitutionality of the companion City *In Rem* law, as applied to the facts of this case.

2. Re: Appellee's argument that a taxpayer has no vested right in a particular method of tax collection.

Where a State (or subdivision thereof) distorts the legitimate purpose of any law to accomplish an improper objective as was done in this case (R. 87-266)

and thereby unjustly deprives a person of his property that person's rights as protected by the Fourteenth Amendment to the Federal Constitution have been violated (*Yick Wo* v. *Hopkins,* 118 U. S. 356).

The motion to dismiss the appeal should be denied.

Respectfully submitted,

WILLIAM P. JONES
36 West 44th Street
New York 36, N. Y.
Counsel for Appellants

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 30

GERALD D. NELSON, GERALDINE D. N. ACKER and GERTRUDE N. FITZPATRICK, as Successor Trustees under the Will of William Nelson, Deceased, and HELEN D. MOLLER,

Appellants,

vs.

THE CITY OF NEW YORK,

Respondent.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR APPELLANTS

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ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR APPELLANTS

Opinions Below

The memorandum decision of the New York Court of Appeals denying reargument but amending the remittitur dated October 13, 1955 (R. 110) is reported in 309 N. Y. 801 and 130 N. E. 2d 602.

The *per curiam* opinion of the New York Court of Appeals affirming the order of the Appellate Division

dated July 8, 1955 (R. 108) is reported in 309 N. Y. 94, 96 and 127 N. E. 2d 827.

The memorandum decision of the Appellate Division of the New York Supreme Court (2nd Dept.) dated October 11, 1954 (R. 105) is reported in 284 App. Div. 894 (3) and 134 N. Y. S. 2d 597.

The opinion of Special Term, Part I of the New York Supreme Court for the County of Kings (R. 100) is reported in New York Law Journal, May 4, 1954, p. 11, col. 8 (not otherwise reported).

Jurisdiction

The New York Court of Appeals issued its final order on October 13, 1955. The Notice of Appeal was duly served on November 30, 1955, and filed December 1, 1955. Probable jurisdiction was noted by order dated May 14, 1956 (R. 112-114).

The jurisdiction of this Court is invoked under Title 28 U. S. C. Section 1257(2).

Constitutional and Statutory Provisions

The relevant portions of the Fourteenth Amendment to the Constitution of the United States provide:

> "Section 1. * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The validity of Title D of Chapter 17 of the Administrative Code of the City of New York (being Chapter 411 of the Laws of 1948 of the State of New York) is involved and it is claimed by Appellants to be repugnant to the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution as it was applied by the City of New York in taking Appellants' two properties under the circumstances presented herein. The text is quoted in full in Appendix A.

Questions Presented

1. Whether the taking by the City of New York of Appellants' two properties herein involved was, on the facts presented in the Record, a deprivation of their property without due process under the Fourteenth Amendment to the United States Constitution?

2. Whether the taking by the City of New York of Appellants' two properties herein involved was, on the facts presented in the record, a denial of equal protection of the laws under the Fourteenth Amendment to the United States Constitution?

3. Whether Chapter 17, Title D of the Administrative Code of the City of New York, being Chapter 411 of the laws of 1948 of the State of New York, is repugnant to the United States Constitution as it was applied by the City of New York in taking Appellants' two properties under the circumstances presented herein, in that such application results in a deprivation of property

without due process and denies Appellants equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution?

Statement of the Case

Because the Appellee made no denial in its opposing affidavit and offered no proof to challenge the following facts in this case, they can be deemed undisputed.

The two properties which the Appellee, the City of New York, claims are forfeit through foreclosure *in rem* are 21-17 45th Avenue, Long Island City, Queens, and 525 Powell Street, Brooklyn. They are fully described and pictured at R. 11-15, 66-69.

Appellants, successor trustees under a testamentary trust acquired fee simple title to the 45th Avenue and Powell Street properties on December 21, 1938 and October 30, 1934 respectively.

During the entire period of Appellants' ownership the two properties were carefully managed and repaired, their economic value was improved and all real estate taxes were fully paid in the case of 45th Avenue through 1951/52 second half and in the case of Powell Street through 1951/52 first half except for 1948/49 second half as to both properties. From the dates of acquisition all water charges were fully paid through the year 1944 as to both properties.

A. The Foreclosure of the 45th Avenue Property

On May 22, 1950, pursuant to Chapter 17, Title D of the Administrative Code of the City of New York, Appellee began an action *in rem* to foreclose the tax liens on Appellants' 45th Avenue property which were four years old or more.

When the action was begun only water charges on the property for 1945 and 1946 were four years old and these totaled only $72.50. The property was then assessed for $6,000. Title purportedly vested in the City on August 22, 1950. On February 21, 1951, the City sold Appellants' 45th Avenue property to one John Balog for $7,000., retaining the entire proceeds.

This action was begun by filing a list of liened parcels in the County Clerk's Office in Queens. The 45th Avenue property was listed as Serial No. 83, Section 1, Block 78, Lot 9 along with 294 other parcels.

The City wrongfully continued to bill the "Estate of William Nelson" for the real estate taxes on the 45th Avenue property for two years after the City had purported to take title and for a year even after the property had been sold to John Balog.

As Appellant Gerald Nelson states in his affidavit (R. 10) the fraudulent bookkeeper presented him with these bills, and he paid them, as in the normal course of business, thus delaying his discovery of the loss of the 45th Avenue property and the bookkeeper's fraud too long to avert the foreclosure of the Powell Street property eighteen months later.

B. The Foreclosure of the Powell Street Property

On December 17, 1951, pursuant to Chapter 17, Title D of the Administrative Code of the City of New York, Appellee began an action *in rem* to foreclose the tax liens on the Powell Street property which were four years old or more.

When the action was begun only three water charges on the property were four years old and these totaled only $814.50. The property was then assessed for $46,000., its actual gross annual rent roll for 1951 was $9,275.30 and the 1951 net return was $2,589.35.

This action was begun by filing in the office of the Clerk of the County of Kings a list of 1704 affected parcels of which Appellants' Powell Street property was one designated in the action by the symbols, Serial No. 887, Section 12, Block 3831, Lot 12.

On May 19, 1952 judgment of foreclosure was entered in this action, and pursuant to said judgment a deed of even date purported to vest title in the City. The City has since been in possession, presumably collecting the $9,275. gross annual rents.

The extraordinary circumstances beginning about 1943 through which Appellants have apparently lost their properties were discovered on November 13, 1952, when Appellants' theretofore trusted bookkeeper attempted suicide. It was found that this person, to cover up peculations, through fraud, malice or mental derangement had concealed from Appellants those water bills which were not paid, and had represented to them that all such charges were being currently paid Appellants, deprived of actual notice of

the *in rem* actions, had no opportunity to "redeem" their properties or file answers in the actions, believing that all taxes and other charges had been fully and timely paid as in the past. The Trustees at all times when these nominal arrears accrued had a balance in their trustee bank account of some $20,000. available to pay these small charges.

When the City applied to Appellants' properties the relatively new—1948—confiscatory *in rem* method of tax collection, the liens on Appellants' two properties barely satisfied the minimum four-year statutory requirement, and there was then available to the City the long-standing and accepted method of collecting tax liens in which the owner's equity is preserved by a required surplus sale. This method is set forth in Title A of Chapter 17 of the City Administrative Code. Also, to enforce prompt payment of water charges (usually as here insignificant in amount compared with realty taxes) the City could use the simple method of cutting off the water supply (City Administrative Code §§ 415(1)-7.0 and 415(1)-19.0).

The legitimate purpose of *in rem* foreclosure is set forth at length in the legislative history of the New York State *in rem* statute which Title D of the City Code closely parallels and upon which it was modeled (R. 43-63). Briefly stated, this purpose is stated to be to provide a method of clearing titles and restoring to the tax rolls real property hopelessly burdened with tax liens that exceed its economic value.

C. Events Since Appellants Discovered Their Loss

Upon discovering their loss in November, 1952 Appellants offered to pay with interest and penalties all charges justly due the City but to no avail. Thereupon they began a plenary action under Article 15 of the New York Real Property Law in the New York Supreme Court, Kings County, to set aside the deed to the Powell Street property and recover the surplus proceeds from the sale of the 45th Avenue property. One of the bases of that action was the repugnance to the United States Constitution of the City's actions in taking Appellants' properties under the circumstances of this case (R. 99). This point was urged in Special Term where Appellee's motion for summary judgment was granted and again in the brief and argument (R. 99) on appeal to the Appellate Division. That Court in affirming the dismissal of the plenary action preserved Appellants' right to bring motions in the foreclosure actions. Thereupon Appellants brought in Special Term the present motions in the foreclosure actions to open the *in rem* default judgments on the ground, among others, that Appellee's actions violated their rights under the Federal Constitution (R. 8). The motions were denied, the Special Term holding that Appellants were not deprived of their Constitutional rights.

ARGUMENT

I

The City of New York by foreclosure *in rem* deprived Appellants of their properties without due process of law.

(a) The abuse of the *in rem* statute in this case amounted to confiscation rather than tax collection.

When the City of New York brought its foreclosure *in rem* actions against Appellants' properties having a combined assessed valuation of $52,000.00 the liens subject to the statute totaled only $887.00 and they were all unpaid water charges.

The City's *in rem* statute as here pertinent, in substance provides that unless all liens are paid or an answer filed within seven weeks after commencement of the action a judgment and deed will vest title in the City absolutely and beyond dispute.

Since Title D of the New York City Code was modeled on Title 3 of Article 7-A of the New York State tax law and copies it almost verbatim, the intent of the legislature in enacting Title 3 is fairly attributable to Title D. The legislative history is contained in the "Governor's Bill Jacket, Year 1939, Chapter 692" (R. 43-64). There was no Bill Jacket for Title D.

The purpose of the *in rem* procedure is epitomized in the following language:

> "* * * The improved procedure is designed to put back on the tax rolls, uninhabited lands and vacant lots.
>
> "* * * There are in New York State alone literally a great many thousands of parcels of vacant lands and broken down improved properties which have been so long virtually abandoned by their owners that the cost of the title searches alone would exceed the value."

To provide a proper procedure for collecting tax liens against valuable income-producing properties the legislature at the same time enacted Title 2 of Article 7-A of the New York State tax law. The purpose of this method was expressed as follows:

> "In order to provide an adequate procedure for foreclosure of tax on improved lands or of current taxes upon land of higher economic value, the Committees decided to include in the bill the normal procedure of action to foreclose as to foreclose a mortgage * * * intended to be the normal method applied to valuable improved property on which liens have not been accumulated."

Title A of Chapter 17 of the New York City Administrative Code is similar to Title 2 of the State tax law in that a public sale of the property is required in foreclosing the tax lien. All surplus realized above the tax lien accrues to the property owner. This method was available to the City when Appellants' properties were foreclosed *in rem*.

Title A and Title D were optional alternative methods to collect the tax. Title D provides:

> "§ D17-2.0
>
> "b. The provisions of this title shall not affect any existing remedy or procedure for the enforcement or foreclosure of tax liens provided for in this code or any other law, but the remedy provided herein for foreclosure by action *in rem* shall be in addition to any other remedies or procedures provided by any general, special or local law."

Nor has Appellee ever claimed that Title A could not have been used in this case had it so chosen.

The mechanics of Title A provide for sale by the City of a "transfer of tax lien" to a third person who then acquires a lien superior to all others, bearing a high interest rate. Appellee has never seriously contended that tax liens of $72.50 and $814.50 secured by properties with assessed valuations of $6,000. and $46,000. respectively could not have been readily sold.

It is Appellants' position that the City had a positive duty in choosing one of two optional tax collection procedures to employ that method (Title A) appropriate and normal to the case, enacted and existing as part of the City's tax law for the protection of the property owner in such circumstances. In this case, if discretion were exercised at all, it was flagrantly abused in favor of the taxing authority.

Had the City efficiently administered its procedure for liquidating tax liens it would promptly have sold "transfers of tax liens" as provided by Title A as

the liens in question currently accrued on Appellants' properties. Had this been done there would have been no "four year old" liens to evoke *in rem* foreclosure.

The strong minority opinion in *City of Peekskill* v. *Perry*, 272 App. Div. 940, a 3-2 decision involving *in rem* foreclosure, expresses Appellants' contentions.

> "The purpose of the tax statutes is to enforce the payment of taxes, but such statutes should not be used or perverted in their use to enable the taxing authority to speculate in real property at the expense of the property owner."

There is clear authority that an otherwise constitutional statute may be so maladministered that while lip service is done to the form, the purpose is perverted to the violation of constitutional rights.

In *Yick Wo* v. *Hopkins*, 118 U. S. 356, a municipal ordinance for the regulation of laundries was abused to discriminate against Chinese laundrymen.

In this case, while the minimal requirements for *in rem* foreclosure were present, the taking of Appellants' properties under the circumstances amounted to confiscation, an appropriation for public use without just compensation and without due process of law.

(b) Appellants were denied equal protection of the laws.

As long as Title A and Title D exist in the City's tax law as alternative procedures for collecting tax liens there is a fair presumption that Title A will continue to be employed in some cases and that some

property owners will thereby enjoy the protection afforded by that method. In any event in this case Appellants were arbitrarily and unequally penalized by the application of Title D by choice of a City tax official without any apparent regard for the protection of their rights provided by Title A. To this extent the action of the City through its tax officials was capricious and arbitrary and denied to Appellants the equal protection of the laws. It is inconceivable that many New York landowners are in effect forced to pay fifty or a hundred times the correct amount of their taxes, as is the plight of the Appellants.

(c) The City of New York and its tax officials knew or should have known that the pro forma statutory notice would not in fact inform Appellants of the foreclosure actions.

The following data was shown in the City's tax records indicating the peculiar tax status of Appellants' properties:

The payment in full of all real estate taxes on Powell Street from 1934 to 1951/52 (payment for the last half of '51-52 having been refused by the City) with the exception of the second half 1948-49 (R. 13).

The fact that Appellants never allocated their payments to the older—and hence more dangerous—water charge arrears as to either property, while paying current real property taxes in vastly larger amounts.

The fact that Appellants left relatively insignificant water charges unpaid on Powell Street after the 45th Avenue property had been foreclosed *in rem*.

The continued payment of real property taxes on 45th Avenue in response to bills improperly sent by the City for two years after the City took title. This should have proved to the City that the Appellants did not have notice of the first foreclosure, and would not receive similar notice of the second. Further, the City's participation through these erroneous tax bills in concealing the bookkeeper's wrongdoing might well estop the City from claiming the benefit of the second notice.

The City knew or should have known that the Appellants could not have knowingly acquiesced in sacrificing real property worth $7,000. for $72.50 of charges. The supposed "notice" of the first foreclosure had obviously failed of its purpose.

Lack of response from Appellants to any notices pertaining to tax arrears.

All of these facts were brought home to the City tax officials every six months when the payments of the real estate taxes were entered on the master tax sheets and again when these sheets were examined in connection with including the properties in the *in rem* lists as shown by the notations on these sheets (R. 40A, 42A).

Title D provides for notice by (1) publication (2) posting and (3) mailing. It is Appellants' position that the City knew or should have known from the foregoing facts that it was a virtual certainty that the pro-forma statutory notice would not inform the Appellants. Appellants in fact did not have notice

Appellants urge that the minimum standard of notice sufficient to satisfy due process as laid down by this Court in *Mullane* v. *Central Hanover Trust Company*, 339 U. S. 306 is not satisfied in this case. In the *Mullane* case this Court said (pp. 313-315):

> "Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case. * * *
>
> "Against this interest of the State we must balance the individual interest sought to be protected by the Fourteenth Amendment. This is defined by our holding that 'The fundamental requisite of due process of law is the opportunity to be heard.' *Grannis* v. *Ordean*, 234 U. S. 385, 394. This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest. * * *
>
> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pending of the action and afford them an opportunity to present their objections. (Citing cases.) The notice must be of such nature as reasonably to convey the required information, *Grannis* v. *Ordean*, *supra*, and it must afford a reasonable time for those interested to make their appearance (citing cases). But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably

met, the constitutional requirements are satisfied. 'The criterion is not the possibility of conceivable injury but the just and reasonable character of the requirements, having reference to the subject with which the statute deals.' (Citing cases.)

"But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected (citing cases), or where conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes."

While the notice employed by the City in the actions pursuant to Title D might be reasonably calculated to apprise interested parties in the absence of known facts to the contrary, the extraordinary tax status of Appellants' properties known to the City rebutted any presumption that these Appellants would be informed of the actions. From the outset as to these Appellants the pro forma notice was a mere gesture.

In *Covey, Committee of Brainard* v. *Town of Somers,* 351 U. S. 141, decided May 7, 1956 this Court held that pro forma notice to a known incompetent for whom no representative had been appointed was not due process. In the *Covey* case property worth $6,500 was taken for arrears of $480. In no case, however, has there been such a disparity as that at bar.

Since the statute as interpreted by the New York courts precluded any equitable relief from such extraordinary hardship, its effect in this case was certainly to deprive the Appellants of their valuable properties without due process of law, under the pretense of collecting an insignificant tax. The injustice here far exceeds anything perpetrated under "strict foreclosure" by hard-hearted mortgagees in bygone centuries.

Conclusion

As to these appellants under the circumstances of this case the application of the *in rem* procedure violated the due process requirements of the Fourteenth Amendment. The judgment should be reversed with costs in all courts and the cause remanded to the State Court for further proceeding.

Dated: September 12, 1956.

Respectfully submitted,

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APPENDIX A

(Applicable Statute)

TITLE D, CHAPTER 17, ADMINISTRATIVE CODE OF THE CITY OF NEW YORK

Foreclosure by Action in Rem

§ D17-1.0 Definitions.—Whenever used in this title the following terms shall mean:

1. "Tax lien." Any unpaid tax, assessment or water rent and interest or penalty thereon, which is a lien on real property whether or not the same be evidenced by a transfer of tax lien or any other written instrument.

2. "Court." The supreme court.

§ D17-2.0 Applicability of procedure of foreclosure in rem.—a. The provisions of this title shall be applicable only to tax liens owned by the city.

b. The provisions of this title shall not affect any existing remedy or procedure for the enforcement or foreclosure of tax liens provided for in this code or any other law, but the remedy provided herein for foreclosure by action in rem shall be in addition to any other remedies or procedures provided by any general, special or local law.

c. The provisions of this title shall not affect pending actions or proceedings, provided, however, that any pending action or proceeding for the enforcement or foreclosure of tax liens may be discontinued, and a new action may be instituted pursuant to the provisions of this title, in respect to any such tax lien.

§ D17-3.0 Jurisdiction.—The supreme court shall have jurisdiction of actions authorized by this title.

§ D17-4.0 FORECLOSURE BY ACTION IN REM.—Whenever it shall appear that a tax lien which has been due and unpaid for a period of at least four years from the date on which the tax, assessment or other legal charge represented thereby became a lien, such tax lien, except as otherwise provided by this title, may be summarily foreclosed in the manner provided in this title, notwithstanding the provisions of any general, special or local law and notwithstanding any omission to hold a tax sale prior to such foreclosure. Ownership of a transfer of tax lien or of a tax sale certificate or of any other instrument evidencing such tax lien by the city shall be evidence of the fact that the tax, assessment or other legal charge represented thereby have not been paid to the city or assigned by it.

§ D17-5.0 FILING OF LIST OF DELINQUENT TAXES.—The city treasurer shall file in the office of the clerk of the county in which the property subject to such tax liens is situated, a list of parcels of property in such county affected by unpaid tax liens held and owned by the city which on the date of filing shall have been unpaid for a period of at least four years or more after the date when the tax, assessment or other legal charge represented thereby became a lien and the city treasurer shall from time to time thereafter continue to file additional lists of parcels of property affected by unpaid tax liens held and owned by the city which on the respective dates of filing shall have been unpaid for a period of at least four years or more after the date when the tax, assessment or other legal charge represented thereby became a lien. Each such list shall compromise all such parcels within a particular section or ward designated on the tax maps of the city, except those parcels excluded from such lists as hereinafter provided. Before filing any list of parcels of property, the city treasurer with the approval of the

board of estimate, may exclude particular parcels therefrom. The city treasurer when requesting approval of the exclusion of any particular parcel shall state the reasons therefor in writing. No parcel shall be excluded from any such list for any reason other than the following: (1) that a meritorious question has been raised by a person having an interest in such parcel as to the validity of the tax lien affecting such parcel, or (2) that the city treasurer before the effective date hereof had agreed to accept payment of delinquent taxes, assessments or other legal charges in instalments of at least two years of such arrears with each year of current taxes, assessments or other legal charges and that there has been no default in such agreement, or (3) that an agreement has been duly made and executed and filed with the city treasurer for the payment of such delinquent taxes, assessments or other legal charges in instalments, the first of which shall be in an amount equal to at least twenty-five per centum of such arrears payable upon the date of making and filing with the city treasurer of the instalment agreement, and the balance of which shall be in amounts equal to at least two years of such arrears and payable with each year of current taxes, assessments or other legal charges and that there has been no default in such agreement, or (4) that within two years last past the city treasurer had sold or the city had assigned a tax lien owned and held by the city to a person who had not completed all of the proceedings necessary to enforce such tax lien. The city treasurer shall transmit a list of all parcels within the particular section or ward selected which are affected by tax liens which shall have been unpaid for a period of at least four years and an additional list which shall designate the parcels on the first list which should be excluded. The board of estimate upon receipt of such lists shall cause them to be published in the City Record. The list covering the parcels to be excluded shall set forth

as to each such parcel, the reason for exclusion. Such publication shall also contain a general description of the boundaries of the section or ward affected, but need not contain measurements or directions. Such list of all parcels and such additional list designating the parcels to be excluded from the first list shall not be approved at the meeting of the board of estimate at which they appear on the calendar for the first time, nor shall such board approve the exclusion of any parcel at any succeeding meeting unless one week has elapsed after the meeting when such exclusion was first submitted for approval. The approval of such exclusion by the board of estimate shall be by resolution recorded in its minutes, stating the reason therefor. All parcels included in any list shall be numbered serially. The city treasurer shall file a copy of each such list, certified by the county clerk, in his main office and in each branch office and in the office of the corporation counsel. Such lists shall be known and designated as the "List of Delinquent Taxes" and shall bear the following caption: "Supreme Court, ...County. In the matter of foreclosure of tax liens pursuant to title D of chapter seventeen of the administrative code of the city of New York. List of delinquent taxes." Where the list comprises parcels in a particular section or ward the caption shall also refer to such section or ward.

The inadvertent failure of the city treasurer to include all parcels in such list, or where more than one list is filed, all such parcels in the list for the designated section or ward shall not affect the validity of any proceeding brought hereunder. Each such list shall also contain as to each parcel, the following:

(a) A brief description sufficient to identify each parcel affected by such tax lien. A description by stating the lot, block and section or ward number, street and street number, if there be such, or other identification

numbers of any parcel upon a tax map, or a lot number or other identification number of any tract, the map of which is filed in the county clerk's or register's office, shall be a sufficient description. An omission or error in the designation of a street or street number shall not affect the validity of any proceeding brought hereunder, either as to such parcel or any other parcels.

(b) The name of the last known owner of such parcel as the same appears on the assessment roll for the year preceding the calendar year in which such list is filed.

(c) A statement of the amount of each tax lien upon such parcel including those which shall have been due and unpaid for less than four years together with the date or dates from which and the rate and rates at which interest and penalties shall be computed.

Such list of delinquent taxes shall be verified by the affidavit of the city treasurer. The filing of such list of delinquent taxes in the office of the clerk of the county in which the property subject to such tax liens is situated shall constitute and have the same force and effect as the filing and recording in said office of an individual and separate notice of pendency of action and as the filing in the supreme court in such county of an individual and separate complaint by the city against the real property therein described, to enforce the payment of the delinquent taxes, assessments or other lawful charges which have accumulated and become liens against such property.

Each county clerk with whom such list of delinquent taxes is filed shall index it in a separate book kept for that purpose which shall constitute due filing, recording and indexing of such notice in lieu of any other requirement under section one hundred twenty-two of the civil practice act or otherwise.

§ D17–6.0 PUBLIC NOTICE OF FORECLOSURE.—Upon the filing of such list in the office of the county clerk, the city treas-

urer forthwith shall cause a notice of foreclosure to be published at least once a week for six successive weeks in the City Record and in two newspapers designated by the city treasurer and published within the county in which the property affected by such list is located, except that in the county of Richmond one of the newspapers designated may be published in the county of New York or in the county of Kings. In New York and Bronx counties the newspapers to be designated for the publication of such notice or any other public notice required pursuant to this article shall be the daily law journal designated by the justices of the appellate division of the first judicial department and another newspaper designated by said justices pursuant to the provisions of subdivisions one and two of section ninety-seven of the judiciary law. Such notice shall be in substantially the following form: "Supreme Court, ... County.

NOTICE OF FORECLOSURE OF TAX LIENS BY THE CITY OF NEW YORK. IN THE BOROUGH OF ..... (here insert name of Borough, and section or ward number and general description giving boundaries of section or ward. Such description need not contain measurements or directions.)

BY ACTION IN REM

Please take notice that on the....day of..... the Treasurer of the City of New York, pursuant to law, filed with the Clerk of.....County, a list of parcels of property affected by unpaid tax liens, held and owned by said City of New York which on the....day of....., had been unpaid for a period of at least four years after the date when the tax, assessment, or other legal charge became a lien. Said list contains as to each such parcel, (a) a brief description of the property affected by such tax lien, (b) the name of the last

known owner of such property as the same appears on the assessment roll for the last calendar year or a statement that the owner is unknown if such be the case, (c) a statement of the amount of such tax lien upon such parcel, including those which shall have been due and unpaid for less than four years together with the date or dates from which, and the rate or rates at which interest and penalties thereon shall be computed.

All persons having or claiming to have an interest in the real property described in such list of delinquent taxes are hereby notified that the filing of such list of delinquent taxes constitutes the commencement by the city of New York of an action in the Supreme Court, ... County to foreclose the tax liens therein described by a foreclosure proceeding in rem and that such list constitutes a notice of pendency of action and a complaint by the City of New York against each piece or parcel of land therein described to enforce the payment of such tax liens. Such action is brought against the real property only and is to foreclose the tax liens described in such list.

No personal judgment shall be entered herein for such taxes, assessments or other legal charges or any part thereof.

This notice is directed to all persons having or claiming to have an interest in the real property described in such list of delinquent taxes and such persons are hereby notified further that a certified copy of such list of delinquent taxes has been filed in the main office of the city treasurer in the Borough of Manhattan and in the office of the city treasurer at ....., in the Borough of ....., and will remain open for public inspection up to and including the ... day of ..... (here insert a date at least seven weeks from the date of the first publication of this notice,) which date is hereby fixed as the last date for redemption.

And take further notice that any person having or

claiming to have an interest in any such parcel and the legal right thereto may on or before said date redeem the same by paying to the city treasurer the amount of all such unpaid tax liens thereon and in addition thereto all interest and penalties which are a lien against such real property computed to and including the date of redemption. In the event that such taxes are paid by a person other than the record owner of such property, the person so paying shall be entitled to have the tax liens affected thereby satisfied of record or to receive an assignment of such tax liens evidenced by a proper written instrument.

Every person having any right, title or interest in or lien upon any parcel described in such list of delinquent taxes may serve a duly verified answer upon the corporation counsel setting forth in detail the nature and amount of his interest or lien and any defense or objection to the foreclosure. Such answer must be filed in the office of the county clerk in the county in which such real property is located and served upon the corporation counsel at any time after the first date of publication but not later than twenty days after the date above mentioned as the last day for redemption. In the event of failure to redeem or answer by any person having the right to redeem or answer, such person shall be forever barred and foreclosed of all his right, title and interest and equity of redemption in and to the parcel described in such list of delinquent taxes and a judgment in foreclosure may be taken by default.

.....

Treasurer

.....

Corporation Counsel

Office and Post Office Address

.....

Borough of Manhattan

City of New York"

On or before the date of the first publication of the notice above set forth, the treasurer shall cause a copy of such notice to be mailed to the last known address of each owner of property affected thereby, as the same appears upon the records in the office of the city treasurer, and in the event that the name or address of such owner does not appear in such records the city treasurer shall so state in an affidavit which shall be filed in the office of the county clerk and the treasurer shall cause a copy of such notice to be posted in the office of the treasurer, in the county court house of the county in which the property subject to such tax lien is situated and three other conspicuous places in the borough in which the affected properties are located. The treasurer shall cause to be inserted with or attached to such notice a statement substantially as follows: "To the party to whom the enclosed notice is addressed: You are the presumptive owner or lienor of one or more of the parcels mentioned and described in the list referred to in the enclosed notice.

Unless the taxes and assessments and all other legal charges are paid, or an answer interposed, as provided by statute, the ownership of said property will in due course pass to the city of New York as provided by the Administrative Code of the City of New York.

Dated .....

.....

Treasurer"

§ D17-7.0 NOTICE TO MORTGAGEE OR LIENOR.—Any owner of real property, any mortgagee thereof, or any person having a lien or claim thereon, or interest therein may file with the city treasurer a notice stating his name, residence and post office address and a description of the parcel in which such person has an interest, which notice shall continue in effect for the purposes of this section

for a period of ten years, unless earlier canceled by such person. The city treasurer shall mail to each such person forthwith after the completion and filing of the list of delinquent taxes as herein provided, a copy of each notice required under this title and affecting such parcel. The failure of the city treasurer to mail such notice as herein provided shall not affect the validity of any proceeding brought pursuant to this title.

§ D17–8.0 FILING OF AFFIDAVITS.—All affidavits of filing, publication, posting, mailing or other acts required by this title shall be made by the person or persons performing such acts and shall be filed in the office of the county clerk of the county in which the property subject to such tax lien is situated and shall together with all other documents required by this title to be filed in the office of such county clerk, constitute and become a part of the judgment roll in such foreclosure action.

§ D17–9.0 TRIAL OF ISSUES.—If a duly verified answer is served upon the corporation counsel within the period mentioned in the notice published pursuant to section D17–6.0 the court shall summarily hear and determine the issues raised by the complaint and answer in the same manner and under the same rules as it hears and determines other actions, except as in this title otherwise provided. Upon such trial, proof that such tax was paid, together with any interest or penalty which may have been due, or that the property was not subject to tax shall constitute a complete defense. Whenever an answer is interposed as herein provided, the defendant shall have an absolute right to the severance of the action as to any parcel or parcels of land in which he has an interest, upon written demand therefor filed with or made a part of his answer.

§ D17-10.0 PREFERENCE OVER OTHER ACTIONS.—Any action brought pursuant to this title shall be given preference over all other causes and actions, and no such action shall be referred except to an official referee and the supreme court is hereby given jurisdiction to make such reference.

§ D17-11.0 PRESUMPTION OF VALIDITY.—It shall not be necessary for the city to plead or prove the various steps, procedures and notices for the assessment and levy of the taxes, assessments or other lawful charges against the lands set forth in the list of delinquent taxes and all such taxes, assessments or other lawful charges and the lien thereof shall be presumed to be valid. A defendant alleging any jurisdictional defect or invalidity in the tax or in the sale thereof must particularly specify in his answer such jurisdictional defect or invalidity and must affirmatively establish such defense. The provisions of this title shall apply to and be valid and effective with respect to all defendants even though one or more of them be infants, incompetents, absentees or non-residents of the state of New York.

§ D17-12.0 FINAL JUDGMENT.—a. The court shall have full power to determine and enforce in all respects the priorities, rights, claims and demands of the several parties to said action, as the same shall exist according to law, including the priorities, rights, claims and demands of the defendants as between themselves, and in a proper case to direct a sale of such lands and the distribution or other disposition of the proceeds of the sale. The court shall further determine upon proof and shall make finding upon such proof whether there has been due compliance by the city with the provisions of this title.

b. Any sale directed by the court shall be at public auction by the city treasurer. Public notice thereof shall

be given by publication in the manner provided in section nine hundred eighty-six of the civil practice act. The city treasurer shall receive no fee or compensation for such service. The description of the parcel offered for sale in such notice shall be that contained in the list of delinquent taxes with such other description, if any, as the court may direct.

c. In directing any conveyance pursuant to this title, the judgment shall direct the city treasurer to prepare and execute a deed conveying title to the parcel or parcels concerned. Said title shall be full and complete. Upon the execution of such deed the grantee shall be seized of an estate in fee simple absolute in such parcel unless expressly made subject to tax liens accrued or accruing subsequent to those contained in the list of delinquent taxes, and all persons, including the state of New York, infants, incompetents, absentees and non-residents, except the city, who may have had any right, title, interest, claim, lien or equity of redemption in or upon such parcel, shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption.

d. The court shall make a final judgment awarding to the city the possession of any parcel described in the list of delinquent taxes not redeemed as provided in this title and as to which no answer is interposed as provided herein. In addition thereto such judgment shall contain a direction to the city treasurer to prepare, execute and cause to be recorded a deed conveying to the city full and complete title to such lands subject only to tax liens accrued or accruing subsequent to those contained in the list of delinquent taxes. Upon the execution of such deed, the city shall be seized of an estate in fee simple absolute in such land and all persons, including the state of New York, infants, incompetents, absentees and non-residents who may have had any right, title, interest, claim, lien or

equity of redemption in or upon such lands shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption.

§ D17–13.0 WITHDRAWAL OF PARCELS FROM FORECLOSURE.—The city treasurer may at any time prior to final judgment withdraw any parcel from a proceeding under this title with the approval by resolution of the board of estimate stating the reason therefor. No parcel shall be withdrawn from such proceeding except for one of the reasons set forth in section D17–5.0 of this title as a reason for exclusion of a parcel from a list of delinquent taxes to be filed. Upon such withdrawal the tax liens on any parcel so withdrawn shall be and remain the same as if no action had been instituted and the city treasurer shall issue a certificate of withdrawal which shall be filed with the county clerk who shall note the word "withdrawn" and the date of such filing opposite the description of such parcel on the list. Such certificate may include one or more parcels appearing on any list. Such notice shall operate to cancel the notice of pendency of action with respect to any such parcel.

§ D17–14.0 RIGHT OF REDEMPTION NOT DIMINISHED.—The period of time in which any owner of, or other person having an interest in a parcel of property may redeem from a sale of a transfer of tax lien is not hereby diminished nor shall such period of time be diminished by the commencement of any action brought pursuant to this title.

§ D17–15.0 PRIORITY OF LIENS.—Tax liens shall rank in priority as may now, or as may hereafter, be provided by law.

§ D17–16.0 MAILING TAX BILLS.—It shall be the duty of the city treasurer, upon receipt of the assessment roll and

warrant to prepare, complete, mail or otherwise deliver tax bills to the owners of property assessed so far as such owners and their addresses are known. But the failure of the city treasurer to mail such tax bills shall not invalidate or otherwise affect such tax nor prevent the accruing of any interest or penalty imposed for the non-payment thereof, nor prevent or stay proceedings under this title, nor effect the title of the plaintiff or purchaser under such proceedings.

§ D17–17.0 REGISTERING OWNER, MORTGAGEE, ET CETERA.—The owner of property liable to assessment, a mortgagee thereof, or a person having a lien or claim thereon, may file with the city treasurer a notice stating his name and post-office address, a description of the premises by reference to section or ward, block and lot numbers on the tax map, which notice shall continue in effect for the purposes of this section for the period of ten years, unless earlier cancelled by such person. Service of notice or process shall be made upon such persons who have filed a notice in respect to such premises. Such service may be made personally or by mail to the address designated in said notice. The failure to receive such notice as herein provided shall not effect the validity of any action or proceeding brought pursuant to this title.

§ D17–18.0 WRIT OF ASSISTANCE.—The city, after acquiring title to premises under and pursuant to the terms and provisions of this title, shall be entitled to a writ of assistance, with the same force and effect as if the city had acquired the property by virtue of a mortgage foreclosure.

§ D17–19.0 CONSOLIDATION OF ACTIONS.—Actions or proceedings pending in the courts, or otherwise, to cancel a sale of a tax lien on lands a lien upon which is being

foreclosed by action under this title, shall be terminated upon the institution of a foreclosure action pursuant to this title, and the rights and remedies of the parties in interest to such pending actions or proceedings shall be determined by the court in such foreclosure action.

§ D17–20.0 LANDS HELD FOR PUBLIC USE; RIGHT OF SALE.—Whenever the city shall become vested with the title to lands by virtue of a foreclosure proceeding brought pursuant to the provisions of this title, such lands shall, unless actually used for other than municipal purposes, be deemed to be held by the city for a public use but for a period of not more than three years from the date of the final judgment. The city is hereby authorized to sell and convey such lands in the manner provided by law for the sale and conveyance of other real property held and owned by the city and not otherwise.

§ D17–21.0 CERTIFICATE OF SALE AS EVIDENCE.—The transfer of tax lien or any other written instrument representing a tax lien shall be presumptive evidence in all courts in all proceedings under this title by and against the purchaser and his representatives, heirs and assigns, of the truth of the statements therein, of the title of the purchaser to the property therein described, and of the regularity and validity of all proceedings had in reference to the taxes, assessments or other legal charges for the non-payment of which the tax lien was sold and the sale thereof. After two years from the issuance of such certificate or other written instrument, no evidence shall be admissible in any court in a proceeding under this title to rebut such presumption unless the holder thereof shall have procured such transfer of tax lien or such other written instrument by fraud or had previous knowledge that it was fraudulently made or procured.

§ D17-22.0 DEED IN LIEU OF FORECLOSURE.—The city may when authorized by resolution of the board of estimate and in lieu of prosecuting an action to foreclose a tax lien on any parcel pursuant to this title accept a conveyance of the interest of any person having any right, title, interest, claim, lien or equity of redemption in or to such parcel.

§ D17-23.0 SEVERABILITY OF PROVISION.—The powers granted and the duties imposed by this title and the applicability thereof to any persons, the city or circumstances shall be construed to be independent and severable and if any one or more sections, clauses, sentences or parts of this title or the applicability thereof to any persons, the city or circumstances shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof or the applicability thereof to other persons or circumstances, but shall be confined in its operation to the specific provisions so held unconstitutional and invalid and to the persons and circumstances affected thereby.

§ D17-24.0 SALES AND FORECLOSURES OF TAX LIENS.—Notwithstanding any of the provisions of this title the city may continue to sell tax liens, transfer the same to purchasers and become the purchaser at such sales of tax liens in the manner provided by this chapter.

§ 2. This act shall take effect on the first day of July, nineteen hundred forty-eight.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 30

GERALD D. NELSON, GERALDINE D. N. ACKER and GERTRUDE N. FITZPATRICK, as Successor Trustees under the Will of William Nelson, Deceased, and HELEN D. MOLLER,

Appellants,

vs.

THE CITY OF NEW YORK,

Respondent.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

REPLY BRIEF FOR APPELLANTS

WILLIAM P. JONES
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Counsel for Appellants

IN THE

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ARGUMENT

A

New York City's *in rem* foreclosure statute directs confiscation of the entire property to enforce the tax lien. The confiscation suffered by appellants violated rights protected by the Fourteenth Amendment.

(1) The validity of an *in rem* foreclosure statute for collecting delinquent real estate taxes similar to Title D, Chapter 17, of the New York City Administrative Code appears unsupported by any decision of this Court.

Common characteristics of the *in rem* method of enforcing real estate tax liens are notice by publica-

tion and a judgment against the property itself which is satisfied by a sale of the property with the surplus proceeds accruing for the benefit of the owner.

The striking irregularity of the City's Statute is that it directs a confiscation of the whole property in lieu of a sale wherein only the amount of the tax due is retained by the tax authority.

It is this feature which, Appellants believe, presents a novel question to this Court.

Certainly *Winona & St. Peter Land Co.* v. *Minnesota,* 159 U. S. 526; *Longyear* v. *Toolan,* 209 U. S. 414 and *Leigh* v. *Green,* 193 U. S. 79, cited by Appellee, are no support for the confiscatory aspect of Title D, nor of the City's action thereunder in taking appellants' two properties.

The *Winona* case, *supra,* was determined under the provisions of Minnesota General Statutes, 1878, Chap. 11, Par. 70-121. That statute specifically directed a sale of the property with the surplus held for the benefit of the owner. The tax authority retained only the amount of the taxes due with interest, Par. 93.

The *Longyear* case, *supra,* involved Michigan Laws of 1893, Act 206, Chap. 98, Par. 70 et seq. [3893]. That Statute also directed a sale of the property to enforce the judgment for the tax lien. The "surplus" sale was accomplished by a rather curious method, the smallest undivided fee interest which the purchaser would take was sold for the amount of the tax; this left the owner with the rest of the fee interest, but the County got only its taxes.

Likewise in the *Leigh* case, *supra*, involving the Laws of Nebraska 1875 at p. 107, a surplus sale was directed. The purchaser there bought the tax authority's lien which he could foreclose like a mortgage after a further sale, the surplus being "brought into Court for the use of the defendant."

Cooley, Taxation, Vol. 3, 4th Ed., states, "Par. 1436. Surplus Moneys. Various methods are adapted in different states to save, if possible, something to the owner when his land is sold."

Accordingly, the implication that *in rem* statutes for the enforcement of real estate tax liens are generally in line with New York's confiscatory method is flatly misleading, the fact to the contrary being that New York's statute appears unique on the point.

(2) There is direct authority that the City's *in rem* foreclosure statute and its action thereunder in confiscating Appellants' properties worth $52,000.00 to collect $887.00 of water charges violates the Fourteenth Amendment.

United States v. *Lawton*, 110 U. S. 146 (1884), seems direct authority for Appellants' case. In the *Lawton* case real estate was sold by the United States for non-payment of tax, amounting, with interest and costs, to $170.50. The United States bought it in for $1,100.00 although no money changed hands. The owner sued in the Court of Claims where he recovered $929.50, the surplus over the tax.

In sustaining the Court of Claims on appeal this Court said:

> "The present case differs from the *Taylor* case (*United States* v. *Taylor*, 104 U. S. 216) only in

this, that the land was in this case bought in by the Tax Commissioners for the United States, and no money was paid on the sale. It was so bought in for a sum which exceeded by $929.50 the tax, penalty, interest and costs. * * * The land in the present case having been 'struck off for,' and 'bid in' for, the United States at the sum of $1,100.00, we are of opinion that the surplus of that sum, beyond the $170.50 tax, penalty, interest and costs, must be regarded as being in the treasury of the United States, under the provisions of section 36 of the Act of 1861, for the use of the owner, in like manner as if it were the surplus of purchase money received by the United States from a third person on a sale of the land to such person for the non-payment of the tax. * * *

To withhold the surplus from the owner would be to violate the Fifth Amendment to the Constitution and to deprive him of his property without due process of law, or to take his property for public use without just compensation."

The opinion is all the more forceful in stating the owner's fundamental right to the surplus since it appears that the statute involved did not specifically provide for payment of the surplus to the owner.

The *Lawton* case is as good law today as it was when Mr. Justice Blatchford delivered his opinion. The prohibition which he placed on the Federal government against confiscation in collecting a real estate tax can and should be placed on the City of New York against confiscation of Appellants' properties in this case.

B

Appellee's suggestion that this appeal is moot seems without merit.

Appellants are entitled to prevail on the merits of this case if they can. Since they charge the original taking, without a surplus sale provided, was unlawful they are not restricted in recovering their properties to the partial relief afforded by Par. D 17-25.0 of the City Code, passed after this appeal was taken, and which provides heavy penalties in gross for the benefit of the City irrelevant to any tax due, and which obliges Appellants to pay the taxes for the period of the City's claimed ownership while the City retains all the rents for that period.

CONCLUSION

As to these appellants the City's *in rem* statute and its action thereunder violates the due process requirements of the Fourteenth Amendment.

Dated: November 7, 1956

Respectfully submitted,

WILLIAM P. JONES
WATSON WASHBURN
36 West 44th Street
New York 36, N. Y.
Counsel for Appellants

(34882)

IN THE

Supreme Court of the United States

October Term, 1955

No. [redacted] 30

Kings County Clerk's Index No. 8700, Year 1951
In the Matter of the
Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York,
LIST OF DELINQUENT TAXES
Sections 10, 11, 12 and 13
Borough of Brooklyn, Action No. 4

Serial No.	Section	Block	Lot
887	12	3831	12

Queens County Clerk's Index No. 3000, Year 1950
In the Matter of the
Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York,
LIST OF DELINQUENT TAXES
Sections 1 and 2
Borough of Queens, Action No. 1

Serial No.	Section	Block	Lot
83	1	78	9

THE CITY OF NEW YORK,
Appellee,

GERALD D. NELSON, GERALDINE D. N. ACKER and GERTRUDE N. FITZPATRICK, as Successor Trustees under the Will of WILLIAM NELSON, deceased, and HELEN D. MOLLER,
Appellants.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEY YORK

MOTION TO DISMISS APPEAL

February 20, 1956.

PETER CAMPBELL BROWN,
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New York 7, N. Y.

HARRY E. O'DONNELL,
BENJAMIN OFFNER,
JOSEPH BRANDWEN,
of Counsel.

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Table of Cases Cited

Other Authorities Cited

IN THE

Supreme Court of the United States

October Term, 1955

No. 686

Kings County Clerk's Index No. 8700, Year 1951
In the Matter of the
Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York,
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THE CITY OF NEW YORK,

Appellee,

GERALD D. NELSON, GERALDINE D. N. ACKER and GERTRUDE N. FITZPATRICK, as Successor Trustees under the Will of WILLIAM NELSON, deceased, and HELEN D. MOLLER,

Appellants.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEY YORK

MOTION TO DISMISS APPEAL

Appellee, The City of New York, in the above entitled cause moves to dismiss the appeal herein on the ground that the question presented by the appeal is so unsubstantial as not to need further argument.

Statement

(References to Record are by Folio No.)

On May 20, 1950, The City of New York, the appellee herein, pursuant to Title D of Chapter 17 of the New York City Administrative Code, commenced a foreclosure action in rem against 294 tax delinquent properties located in Sections 1 and 2 of the Borough of Queens. Under Title D, the Treasurer of The City of New York could select the tax section to be foreclosed, but when that was done, all discretion was taken from him. He had no power to distinguish between improved and vacant properties, or large and small amounts of tax arrears. It was mandatory that he include in the List of Delinquent Taxes *all* parcels four or more years delinquent in the Section selected. The "45th Avenue Property" of the appellants, therefore, was included in such list since it was located in Section 1 and was tax delinquent for four or more years (R. 309-310).

On December 17, 1951, The City of New York, pursuant to the same statute, commenced a similar in rem action against 1704 parcels of tax delinquent properties located in Sections 10, 11, 12 and 13 of the Borough of Brooklyn. Properly included in the List of Delinquent Taxes was the "Powell Street Property" of the appellants since it was located in Section 12 and was tax delinquent for four or more years (R. 304-305).

In both in rem actions the City could not seek personal money judgments. The City duly complied with the in rem jurisdictional requirements as to the filing of the List of Delinquent Taxes, and the posting and publication of the Public Notice of Foreclosure (R. 306). The appellants admitted that with respect to each of their properties the City mailed a copy of the Public Notice of Foreclosure to the office maintained by them at "36 West 44th Street, New

York 18, N. Y." and that such notices were received by their duly authorized agent (R. 46, 47, 313).

The appellants failed to pay the delinquent tax liens prior to the last date fixed for payment and never interposed any answer in the separate foreclosure actions (R. 307 and 311). They were in complete default. Consequently, judgments of foreclosure dispensing with the necessity of a judicial sale and directing the conveyance of the fee title to the City were entered. The City became vested with title to the 45th Avenue and Powell Street properties on August 22, 1950, and May 19, 1952, respectively. The 45th Street property was subsequently sold in accordance with the New York City Charter at public auction to one John Balog. The City still retains title and is in possession of the Powell Street property (R. 308-312).

Although the City did prepare tax bills for the years 1950-51 and 1951-52 on the 45th Avenue property (R. 156, 161), both of these bills called attention to the tax arrears on the property. Two duplicate payments made by the appellants likewise were called to their attention by two notices advising them to investigate the matter and apply for a refund. These notices were received by appellants five months before the City had even started the in rem action against the Powell Street property and nine months before the City had acquired its title (R. 386-405). Thus, appellants were apprised by sufficient notice that something was wrong with the tax status of their properties.

The trustee-appellants, who were administering these properties as assets of a trust, not only failed to exercise ordinary business prudence in examining the tax bills, but were grossly negligent in never having made an independent tax search of their properties or audit of the accounts of their trusted bookkeeper (R. 336-344).

On March 16, 1954, the appellants moved to open their defaults in payment and pleading. The Court of first

instance denied the motions in all respects and pointed out that it was precluded under the statute as construed by the highest court of the State of New York from extending the time of the appellants to answer or make payment. It found that the City had fully complied with the statutory requirements and that the plight of the appellants was attributable to their misplaced confidence in their trusted bookkeeper and agent, who had concealed all notices received from the City in order to cover up his defalcations (R. 418-420).

The orders of the Court of first instance were affirmed by the Appellate Division of the New York Supreme Court (284 App. Div. 894) and subsequently by the New York Court of Appeals (309 N. Y. 94). The latter Court in its opinion stated that it was without power to afford relief and that relief could only be had through an act of the New York State Legislature.,

POINT I

The vesting of title in the City of New York of the two properties here involved presents no substantial federal question.

The appellants concede the general constitutionality of Title D (Jurisdictional Statement, pp. 8-11) but assert that in view of the disparity between the amount of the delinquent tax liens and the equity of appellants, the use of Title D as a method of collecting tax delinquencies instead of Title A of the New York City Administrative Code was the capricious choice of a City Tax Official that deprived them of their properties without due process and without just compensation.

Although Title A provides for a method of collecting tax delinquencies substantially *in personam* in procedure, a delinquent tax payer obtains no vested right in such

methods of collection. Any change in the remedy or mode of procedure made by the Legislature divests the property owner of no vested right. *League* v. *Texas*, 184 U. S. 156 (1902).

When, in 1948, the Legislature of the State of New York enacted Title D, it provided in § D17-2.0 thereof that such method of collection was to be in addition to any other existing remedies and, further, that actions under Title A could be discontinued and new actions started under Title D. The Legislature intended to afford The City of New York a summary remedy unencumbered by the many intricacies of the mortgage foreclosure type of actions which had proved to be time-consuming, expensive and outmoded. The choice, therefore, of Title D instead of Title A by the Treasurer of The City of New York as a method of collecting arrears against appellants' properties in 1950 and 1951 was not capricious but a proper exercise of discretion by which it became mandatory to foreclose all parcels delinquent four or more years regardless of the amount of arrears. The appellants have no constitutional right to insist that the method which the City must adopt for collection is one which has hitherto proved ineffectual.

Although a tax enforcement statute conceivably could be unconstitutional on the grounds that it deprives persons of their property without due process or denies to them the equal protection of the laws, it certainly could not be attacked as invalid on the ground that it takes an equity "without compensation". By the very nature of the tax enforcement process, as distinct from condemnation, equities are barred and foreclosed.

Fundamentally, the right to redemption is exclusively a statutory right. It is a matter of legislative grace and the Courts may not enlarge the period of redemption when the Legislature had laid down a particular date on which all of the delinquent's rights should terminate.

Keely v. *Sanders*, 99 U. S. 441, 445-446 (1878);
Bank of the State of Alabama v. *Dalton*, 9 How. 522 (1850);
Johnson v. *Smith*, 297 N. Y. 165, 171 (1948);
Levy v. *Newman*, 130 N. Y. 11, 13, 14 (1891).

Drastic and harsh procedures for the collection of taxes have been held to constitute due process and have been so considered by both history and the Courts. These summary methods were in existence long before the adoption of the Constitution and are not affected thereby.

Leigh v. *Green*, 193 U. S. 79, 89-91 (1904);
King v. *Mullins*, 171 U. S. 404 (1898);
Palmer v. *McMahon*, 133 U. S. 660, 669-670 (1890) affirming *McMahon* v. *Palmer*, 102 N. Y. 176 (1886);
State Railroad Tax Cases, 92 U. S. 575, 614 (1875);
Murray's Lessee v. *Hoboken Land & Improvement Co.*, 18 How. 272, 281-282 (1856);
City of New York (*801-815 E. New York Ave.*), 290 N. Y. 236, 241 (1943).

There is no constitutional principle that entitles appellants to be protected by the *in personam* type of procedure with judicial sale of their properties rather than by a conveyance of the fee title to The City of New York as a result of a procedure in rem. This is especially so where the delinquent taxpayer has defaulted in pleading and payment. Thus Title 3 of the New York State Tax Law, providing for in rem foreclosure with no distinction as to amount of arrears as compared with equities, and which is almost identical with the City's Title D has been held constitutional. *City of New Rochelle* v. *Echo Bay Waterfront Corp.*, 294 N. Y. 678 (1945), cert. den. 326 U. S. 720.

Any doubt cast upon the constitutionality of Title 3 of the New York State Tax Law by *Lynbrook Gardens*

v. *Ullman*, 291 N. Y. 472 (1943), as suggested by the appellants (Jurisdictional Statement, p. 12) was laid to rest by the subsequent decision in *City of New Rochelle* v. *Echo Bay Waterfront Corp, supra*, where the judgment, as in the present case, directed an absolute conveyance to the City. Upon a subsequent motion in the New York Court of Appeals to amend the remittitur the motion was granted with the following memorandum (294 N. Y. 721):

> "The appellant contended that the notice given of the commencement of this action was not adequate as due process of law under the 14th Amendment of the Constitution of the United States. The appellant also contended that the judgment entered in this case deprived the appellant of its property without due process of law and appropriated its property to public use without just compensation in violation of the 14th Amendment of the Constitution of the United States. This Court held that the rights of the appellant under the 14th Amendment of the Constitution of the United States had not been violated or denied."

Subsequently certiorari was denied by this Court (326 U. S. 720).

This Court in *Winona & St. Peter Land Co.* v. *Minnesota*, 159 U. S. 526 (1895), held constitutional the in rem foreclosure statute of the State of Minnesota which is "strikingly similar to that set forth in Title 3" (*New Rochelle* opinion, 268 App. Div. 182, 186).

There is nothing in the Constitution which requires the Legislature of the State of New York in prescribing the rules of tax collection to adopt those which would be advantageous to a defaulting taxpayer, for it is well settled that the Legislature is the sole judge in determining what steps are to be followed in the collection of taxes. Such function is administrative and remains such even though judicial forms are employed in the process. If a judicial

agency is used for some part of the process, it is not because required, but convenient. It may be dispensed with. It is entirely for the Legislature to determine whether there should be seizure and sale, outright forfeiture, garnishment of debt, fine and imprisonment, foreclosure, civil suit or other summary method of tax enforcement.

Phillips v. *Commissioner*, 283 U. S. 589 (1931);
Palmer v. *McMahon, supra*, 133 U. S. 660;
McMillen v. *Anderson*, 95 U. S. 37 (1877);
Town of Amherst v. *County of Erie*, 260 N. Y. 361, 370 (1933);
Protestant Episcopal Public Schools v. *Davis*, 31 N. Y. 574 (1864).

This Court has repeatedly held that no person is deprived of due process of law under a statute which provides for assessment with notice and subsequent collection without notice.

Ballard v. *Hunter*, 204 U. S. 241, 254-255 (1907);
Winona & St. Peter Land Co. v. *Minnesota, supra*, 159 U. S. 526;
Palmer v. *McMahon, supra*, 133 U. S. 660;
Spencer v. *Merchant*, 125 U. S. 345, 355-356 (1888);
Hagar v. *Reclamation District*, 111 U. S. 701 (1884);
McMillen v. *Anderson, supra*, 95 U. S. 37.

In the *801-815 E. New York Ave.* case, *supra*, the New York Court of Appeals, after citing the provisions of the New York City Charter affording the taxpayer notice and an opportunity to be heard at some stage before the assessment becomes final, summarized the rule as follows (290 N. Y., at p. 241):

> "Once a taxpayer has been thus protected, the due process clauses are not offended by summary statu-

tory remedies for collection of ordinary taxes (3 Cooley on Taxation [4th ed.] § 1113). 'The collection of such taxes, after they are assessed, is a purely administrative act. No constitutional right of the taxpayer is invaded when the assessment is collected by forcible process, anyn ore than when a judgment is forcibly collected'. (Gray, Limitations of the Taxing Power, p. 581)".

Appellants have not been deprived of due process. Not only were they given due notice of the assessment and levy of the tax, sufficient of itself to satisfy the constitutional guaranty, but they admittedly received the public notice of foreclosure required by Title D.

POINT II

The appeal should be dismissed, with costs.

February 20, 1956.

Respectfully submitted,

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HARRY E. O'DONNELL,
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(35068)

IN THE

Supreme Court of the United States

October Term, 1956

No. 30

GERALD D. NELSON, GERALDINE D. N. ACKER and GERTRUDE N. FITZPATRICK, as Successor Trustees under the Will of William Nelson, Deceased, and HELEN D. MOLLER,

Appellants,

vs.

THE CITY OF NEW YORK,

Appellee.

On Appeal from the Court of Appeals of the State of New York

APPELLEE'S BRIEF

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APPELLEE'S BRIEF

Constitutional and Statutory Provisions

Appellants invoke the relevant portions of the Fourteenth Amendment to the Constitution of the United States, which are set forth at page 2 of their brief.

This appeal involves the foreclosure by the City of New York of two parcels of real estate formerly owned by appellants. The foreclosure proceedings were instituted by

the City of New York pursuant to Title D of Chapter 17 of the Administrative Code of the City of New York. The appendix to appellants' brief sets forth that statute as it existed at the time of the foreclosures. We annex as an appendix to this brief §D17-25.0, which was added to the Administrative Code by Chapter 481 of the Laws of 1956, effective April 9, 1956, subsequent to the decision of the New York Court of Appeals and the filing of the appeal herein. The enactment of that statute is relevant to our contention that the instant appeal is moot with respect to one of the two parcels involved.

Questions Presented

The questions sought to be raised by appellants relate to the validity of the in rem foreclosure by the City of New York, pursuant to statutory authorization, against two parcels of property formerly owned by the appellants.

The appellants urge that the in rem foreclosure statute (Title D, Chapter 17, of the Administrative Code of the City of New York) and the acquisition of title to the two parcels by the City pursuant to the statute violated both the "due process" and "equal protection of the laws" provisions of the Fourteenth Amendment.

We believe that the appeal is moot with respect to one of the parcels involved (the Powell Street property) because of the passage of Laws of 1956, Chapter 481, by the New York State Legislature. That statute took effect on April 9, 1956, subsequent to the decision herein of the New York Court of Appeals and the filing of the appeal to this Court. The statute provides for a method of redemption applicable to the Powell Street property. The appellants

have made application therefor, and the City has indicated its willingness to reconvey this property to appellants upon payment of unpaid tax arrears with interest and costs of foreclosure as provided by statute. The appellants have, however, requested that action on their application by the City be deferred pending the decision of the instant appeal.

With respect to the other parcel involved (the 45th Avenue property) the redemption statute (L. 1956, ch. 481) is not applicable since the property had been sold by the City prior to the passage of the statute.

Statement of Case

Since 1933, Gerald D. Nelson has been the active or managing Trustee of the Estate of William Nelson, maintaining an office at 36 West 44th Street, Manhattan, where the records of the Trust were kept and from which the various mortgages and real properties belonging to the Trust were managed. Among such properties were the 45th Avenue property and the Powell Street property, subsequently foreclosed by The City of New York by action in rem. The owners of such properties were described on the records of the City Treasurer as "Est. William Nelson, 36 West 44th Street, New York 18, N. Y." (R. 8-9). This was the address supplied by the appellants to the City Treasurer (R. 73).

It was Mr. Nelson's custom to spend several hours a week at this office on the affairs of the Trust. At such visits, the bookkeeper would bring to Mr. Nelson's attention and have ready for payment "all bills, including bills for real estate taxes and water charges on the various trust properties". Beginning about 1945 the bookkeeper embarked upon a program of embezzlement. This book-

keeper had been regularly presenting to Mr. Nelson for payment all of the real estate tax bills for the years from 1945 through 1952. Mr. Nelson claimed that not only was he unaware of his bookkeeper's fraud upon the estate, but believed that "all charges against their property had been paid and were regularly being paid" (R. 9-10).

However, all tax bills on the 45th Avenue and Powell Street properties were presented to Mr. Nelson, and each bill for every year from 1945 through 1952 had a notice that taxes were in arrears printed clearly on the face of the tax bill. The word "arrears" included water charges. Payments were due the City of New York October 1st and April 1st of each year, so that twice a year, for six years, when Mr. Nelson wrote out the checks for the payment of the real estate taxes, there was thus called to his attention the presence of arrears on the 45th Avenue and Powell Street properties. It was incumbent upon Mr. Nelson, as managing trustee of the estate, to have at least looked at the tax bills, and a simple question put to the bookkeeper as to why there should be a notation of arrears undoubtedly would have revealed the fraud then being perpetrated (R. 80-81).

Mr. Nelson failed to have made an independent audit of the accounts of his trusted bookkeeper or an independent tax search of the properties in the trust. This was especially strange in the face of Mr. Nelson's statement (R. 13) that he carried on a systematic and regular program of maintenance and repair through a reputable real estate management firm in Brooklyn (R. 82). The City charged, without denial, that these failures on the part of Mr. Nelson constituted such negligence as permitted the 45th Avenue and Powell Street properties to become tax delinquent for at least four years (R. 82).

Such was the situation when, on May 20, 1950, the City of New York, pursuant to Title D of Chapter 17 of the New York City Administrative Code, commenced a foreclosure action in rem against 294 tax-delinquent properties located in Sections 1 and 2 of the Borough of Queens. Under Title D, the Treasurer of the City of New York could select the tax section to be foreclosed but when that was done, all discretion was taken from him. He had no power to distinguish between improved and vacant properties or large and small amounts of tax arrears. It was mandatory that he include in the List of Delinquent Taxes *all* parcels four or more years delinquent in the section selected. The 45th Avenue property of the appellants, therefore, was included in the List since it was located in Section 1 and was tax-delinquent for four or more years. The tax liens which had accrued against this property were the water charges which had become liens for the years from 1945-1950, inclusive, and the real estate taxes which had become liens for the second half of the tax year 1948/49 (R. 73-74). (These totalled $320.20.)

Had the Treasurer been desirous of excluding this property from foreclosure, he could not have done so because the appellants had not placed themselves within one of the four specific statutory reasons for exclusion set forth in Section D17-5.0 of the Administrative Code.* The disparity between the amount of unpaid taxes and the value

* The four statutory reasons for exclusion are: (1) That a question has been raised as to the validity of the tax lien on the parcel; (2) that before the effective date of the statute the City Treasurer had agreed to accept payment of delinquent taxes in instalments and the payment of such instalments is not in default; (3) that an instalment agreement has been entered into by the Treasurer after the effective date of the statute, and there is no default by the taxpayer; (4) that within two years prior to the filing of the list of delinquent taxes the City has sold a tax lien on the property the enforcement of which has not been completed.

of the property was in itself no reason to exclude it from the action, for the Legislature did not give the Treasurer this power of selection. In fact, the Legislature of the State of New York, when it enacted Title D in 1948, provided in Section D17-2.0 thereof that the in rem foreclosure method of collection was to be in addition to any other existing remedies and, further, that actions to foreclose tax liens pursuant to Title A of the Administrative Code (§§415(1)-7.0—415(1)-53.3 [Williams Ed., pp. 496-517]) could be discontinued and new in rem actions started under Title D. Conditions had proved the necessity for a summary type of tax collection unencumbered by the many intricacies of the mortgage foreclosure type of actions which were time-consuming, expensive and outmoded (R. 82, 88, 90).

On December 17, 1951, the City of New York, pursuant to the same statute, commenced a similar in rem action against 1704 parcels of tax-delinquent properties located in Sections 10, 11, 12 and 13 of the Borough of Brooklyn. Properly included in the List of Delinquent Taxes was the Powell Street property of the appellants since it was located in Section 12 and was tax-delinquent for four or more years. The tax liens which had accrued against this property were water charges which had become liens for the years from 1945-1951 inclusive and the real estate taxes which had become liens for the second half of the tax year 1948/49 (R. 72). (These amounted to $2,681.)

In both in rem actions, the City did not and could not seek personal money judgments. The City duly complied with the in rem jurisdictional requirements as to the filing of the List of Delinquent Taxes and the posting and publication of the Public Notice of Foreclosure (R.

73-74). The appellants admitted that with respect to each of their properties the City mailed a copy of the Public Notice of Foreclosure to the office maintained by them at "36 West 44th Street, New York 18, N. Y." and that such notices were received by their duly authorized agent (R. 9, 10, 74). Appellants' claim that they were deprived of actual notice of the in rem foreclosure action could not be attributed to any failure on the part of The City of New York to comply with the notice provisions of Title D but to their misplaced confidence in their trusted bookkeeper who was their agent and who concealed such notices from Mr. Nelson.

Appellants failed to pay the delinquent tax liens prior to the last date fixed for payment and never interposed any answer within the required time limits. They were in complete default. Consequently, judgments of foreclosure dispensing with the necessity of a judicial sale and directing the conveyance of the fee title to the City were entered. The City became vested with title to the 45th Avenue and Powell Street properties on August 22, 1950 and May 19, 1952, respectively. The 45th Avenue property was subsequently sold in accordance with the New York City Charter at public auction and conveyed to Mr. John Balog on April 19, 1951 (R. 93). The City still retains title and is in possession of the Powell Street property (R. 73-74).

The City prepared tax bills for the years 1950/1951 and 1951/1952 on the 45th Avenue property. Both of these bills called attention to the tax arrears on the property. The first bill for the 1950/1951 taxes (R. 36a), prepared in July 1950 along with 300,000 others, indicates that it was in arrears as of June 30, 1950. This delinquency was once again available for Mr. Nelson's attention when he

made the payment for the second half of the 1950/1951 taxes in April, 1951. When the bookkeeper presented the following year's bill, 1951/1952 (R. 38a), to Mr. Nelson for payment, there was again revealed on the face of the tax bill the fact that there were still arrears as of June 30, 1951. Overlooking this distinct notice that something was wrong with the tax status of the 45th Avenue property, Mr. Nelson again, in April of 1952, paid the second half of the 1951/1952 taxes (R. 80).

This resulted in duplicate payments being made by the appellants and John Balog, who had purchased the property from the City after the in rem foreclosure. Such duplicate payments were called to appellants' attention by two notices from the City of New York advising them to investigate the matter and apply for a refund (R. 94-95). These notices were received by appellants five months before the City had ever started the in rem action against the Powell Street property and nine months before the City had acquired its title (R. 83). Thus, appellants were apprised by sufficient notice that something was wrong with the tax status of their properties. The City of New York in no way contributed to the illegal acts of appellants' bookkeeper.

Opinions Below

On March 16, 1954, the appellants moved to open their defaults in payment and pleading. The Court of first instance denied the motions in all respects and pointed out that it was precluded under the statute as construed by the highest Court of the State of New York from extending the time of the appellants to answer or make payment. It found that the City had fully complied with the

statutory requirements and that the plight of the appellants was attributable to their misplaced confidence in their trusted bookkeeper and agent, who had concealed all notices received from The City of New York in order to cover up his defalcations (R. 100).

The orders of the Court of first instance were affirmed by the Appellate Division of the New York Supreme Court (R. 105) (284 App. Div. 894, 134 N. Y. S. 2d 597) and subsequently by the New York Court of Appeals (R. 108) (309 N. Y. 94, 96; 127 N. E. 2d 827). The latter Court in its opinion stated that it was without power to afford relief and that relief could only be through an act of the New York State Legislature. Subsequently, the remittitur was amended to reflect that there were presented and necessarily passed upon questions under the Constitution of the United States (R. 110).

Events Since Decision of the Court of Appeals

Subsequent to the decision of the Court of Appeals and the filing of a notice of appeal to this Court, the Legislature of the State of New York enacted Chapter 481 of the Laws of 1956, effective on April 9, 1956, which added D17-25.0 to Title D of Chapter 17 of the Administrative Code. This statute provides for the reconveyance by the City of New York of property theretofore acquired through foreclosure by action in rem to the owners of record on the day when the City commenced its foreclosure actions. Application for such reconveyance, in the case of properties already foreclosed, had to be made within 60 days after the statute took effect. The statute is applicable only to properties which the City has not sold after acquiring

title, and further provides that reconveyance be conditioned upon payment by the former owner of tax arrears, interest thereon and costs of foreclosure. The appellants, pursuant to this statute, on April 25, 1956, applied for the reconveyance of the title to the Powell Street property. By a letter dated September 17, 1956, the Director of Real Estate of the Board of Estimate indicated his willingness to recommend approval of appellants' application, and requested the appellants to forward the sum of $15,711.68, representing the amount of unpaid tax arrears, interest, and the costs of the foreclosure. By letter dated September 19, 1956, the appellants stated that they would promptly pay as requested in the event of an affirmance by this Court of their appeal and requested the City to withhold any action on their application pending a decision by this Court. Copies of these letters will be available for this Court upon the argument of this appeal.

Summary of Argument

The in rem foreclosure statute here involved satisfies the requirements of due process since it affords ample opportunity to an owner to protect his interest in his property. No question of notice under the statute is presented since bills for unpaid taxes as well as notices of the foreclosure suits were sent to the address supplied by the appellants and were admittedly received by their employee who wrongfully concealed the notices from them. The difficulties of the appellants arose not by reason of the statutory provisions but because of the defalcations of their employee. Under those circumstances, the loss suffered by the appellants may not be validly invoked as the basis for an attack upon the statute.

The fact that the City had an alternative remedy by way of a foreclosure procedure substantially *in personam*, which might have resulted in an enhancement of the appellants' rights, imposed no obligation upon the City to use that method in the collection of taxes. Experience had shown that the old method was cumbersome and ineffective as a means of collecting taxes. For that reason the Legislature had enacted the in rem foreclosure statute and had expressly provided that the City could pursue that method regardless of any other course open to it. Appellants have no constitutional right to insist upon a particular method of tax enforcement.

ARGUMENT

The in rem foreclosure statute and its application herein constitute a valid exercise of the sovereign power and do not violate due process or equal protection of the laws within the intendment of the Fourteenth Amendment. The existence of an alternative remedy which had proved inadequate imposed no duty on the City to proceed in that manner so as to enhance appellants' rights.

1. The in rem foreclosure statute satisfies the requirements of due process.

The constitutionality of the in rem foreclosure statute here involved (Title D, Chapter 17, of the Administrative Code) would appear to be settled by the decision of this Court in *Winona & St. Peter Land Co.* v. *Minnesota*, 159 U. S. 526 (1895), and see also *City of New Rochelle* v. *Echo Bay Waterfront Corp.*, 294 N. Y. 678, 60 N. E. 2d 838 (1945), cert. den. 326 U. S. 720 (1945).

The *Winona* case involved a Minnesota statute described as "strikingly similar to that set forth in Title 3 [of Article VII-A of the New York State Tax Law]" (*New Rochelle* opinion, 268 App. Div. 182, 186), which appellants concede (Brief, p. 9) is in turn similar to Title D of Chapter 17 of the Administrative Code here involved. This Court described in detail the method for the collection of taxes authorized by the statute (159 U. S., at pp. 535-536) and, in disposing of the plaintiff's contention that the statute infringed upon the due process provision of the Fourteenth Amendment, said (*id.*, at pp. 537-538):

> "That the notice is not personal but by publication is not sufficient to vitiate it. Where, as here, the statute prescribes the court in which and the time at which the various steps in the collection proceedings shall be taken a notice by publication to all parties interested to appear and defend is suitable and one that sufficiently answers the demand of due process of law. *State Railroad Tax Cases,* 92 U. S. 575, 609; *Hagar* v. *Reclamation District,* 111 U. S. 701, 710; *Kentucky Railroad Tax Cases,* 115 U. S. 321; *Lent* v. *Tillson,* 140 U. S. 316, 328; *Pittsburg, Cincinnati &c. Railway* v. *Backus;* 154 U. S. 421. It cannot be doubted under these various authorities that in respect to the collection of these taxes ample provision is made for notice, and, therefore, that it cannot be adjudged that the owner is for want thereof deprived of his property without due process of law."

Other cases in which this Court has upheld the validity of state statutes providing for the enforcement of real property taxes by in rem procedure are *Longyear* v. *Toolan,* 209 U. S. 414 (1908); *Leigh* v. *Green,* 193 U. S. 79, 89-91 (1904), and *King* v. *Mullins,* 171 U. S. 404, 429-431 (1898). See also *Horne* v. *Ocala,* 143 Fla. 108, 196 So. 441 (1940), appeal dismissed for want of a substantial federal question, 311 U. S. 608 (1940).

2. The appellants' authorized agent admittedly received notice of the foreclosure actions. Hence, the question of adequacy of notice is not here involved.

While the in rem foreclosure statute (Title D, Chapter 17, of the Administrative Code) provides for notice by publication, no question of adequate notice under the statutory provisions is here involved as it was, for example, in *Mullane* v. *Central Hanover Trust Company*, 339 U. S. 306 (1950), or *Covey* v. *Town of Somers*, 351 U. S. 141 (1956), cited by appellants (Brief, pp. 15-16). Here, the City mailed the tax bills to "Est. William Nelson, 36 West 44th Street, New York 18, N. Y.", the address supplied by appellants, and those bills admittedly reached that destination and indicated on their face that there were tax arrears on each of the properties during the entire period here involved (R. 9-10). Moreover, when the two foreclosure actions were commenced, notices thereof were mailed to the appellants at the same address and also arrived at their destination (R. 9, 10, 74). Those notices contained the statement that unless the owner made payment or interposed an answer, as provided by statute, "the ownership of said property will in due course pass to the City of New York as provided by the Administrative Code of the City of New York" (Administrative Code, §D17-6.0).

The failure of the appellants to know about the tax arrears or the foreclosures was due not to the inadequacy of the notices supplied by the City but to the misfeasance of their bookkeeper. The appellants urge (Brief, pp. 13-14) that their failure to pay the relatively small taxes here involved should have been warning to the City that they

would not receive notice of the foreclosure suits. We think this contention will not withstand analysis.

The address to which notice was mailed was the only one supplied by appellants and mail thus addressed reached its destination. The City was no more under a duty to investigate the facts and circumstances leading to appellants' default than it would be with respect to defaults on any of the numerous tax parcels in the City. The contention that the City was placed on notice that appellants were unaware of the tax delinquencies and was therefore bound to take further steps before foreclosing because the amount of tax arrears was small, would place a crippling burden on the City if it were applied generally. It would mean that the City could safely proceed to foreclose if the tax delinquency was a large one but must proceed at its peril if it were a small one and would render the in rem foreclosure statute ineffective as to "small" delinquencies, however that term were to be defined.

3. The existence of an alternative method of tax enforcement which had proved inadequate imposed no obligation on the City to use that method.

The appellants contend that the City had an alternative method of collecting for unpaid taxes, *i.e.*, by transfer of tax lien (Title A, Chapter 17, Admin. Code); that the use of that method would have resulted in the payment of the taxes or, if there was a foreclosure, in the creation of a surplus from the sale of the 45th Avenue property which would have accrued to appellants' credit; and that consequently the City had no right to resort to the in rem foreclosure method. This contention requires a brief discussion as to the reasons underlying the enactment of Title D, Chapter 17 of the Administrative Code.

Title A provides for a method of foreclosing for tax delinquencies against individual parcels only. A lien for unpaid taxes on a particular parcel must first be offered for sale at public auction. The purchaser may foreclose if the owner fails to pay interest on the tax lien, or current taxes as they accrue, or the face amount of the tax lien within three years of the date of sale. If the lien is not purchased at the sale, the City may then foreclose against the individual parcel and any surplus resulting from the foreclosure sale is set aside for the owner.

The method of foreclosure under Title A is patterned after that prevailing in a mortgage foreclosure between private parties. It was substantially *in personam* in procedure requiring an examination of title, certification of parties defendant, service of process and all other ramifications of such an action, finally resulting in a judicial sale (Adm. Code, §§415(1)-23.0 et seq.).

The method had proved time-consuming, cumbersome, expensive and outmoded so far as the City was concerned. Many owners of income-producing properties permitted substantial tax arrears to accrue, knowing that as a practical matter the City could do nothing to enforce prompt collection.

By the enactment of the in rem method of tax collection, the Legislature intended to afford the City a summary remedy, unencumbered by the many intricacies of the mortgage foreclosure type of action and eliminating foreclosure sales. This intention is stated unequivocally in §D17-4.0, which provides in part that tax liens "may be summarily foreclosed * * * notwithstanding any omission to hold a tax sale prior to such foreclosure."

The Legislature's intent was made manifest in other ways. A reading of Title D shows that the City was provided with a method of foreclosing tax liens simple in form and procedure, expeditious in operation, inexpensive in cost, summary in nature, and free from all the ramifications of the old-fashioned transfer of tax lien foreclosure action, which include expensive publication of the notice of sale and sales at public auction with attendant referees' and auctioneers' fees.

The choice, therefore, of Title D instead of Title A by the Treasurer of the City of New York as a method of collecting arrears against properties in the Sections where appellants' parcels were located was not capricious but a proper exercise of discretion by which it became mandatory to foreclose all parcels in those Sections delinquent four or more years, regardless of the amount of arrears. The appellants have no constitutional right to insist that the method which the City must adopt for collection is one which has hitherto proved ineffectual. *Wood* v. *Lovell*, 313 U. S. 362, 371 (1941); *League* v. *Texas*, 184 U. S. 156, 158 (1902).

With respect to appellants' contention that the use of Title A would have resulted in a surplus, we point out that Title D makes provision for a separate sale of a particular parcel and provision for a surplus in those instances where an owner of property interposes an answer in an in rem foreclosure sale. Section D17-12.0 (a) provides that in a proper case the Court has the power to direct a separate judicial sale of such lands and to distribute the proceeds of sale. This has been interpreted by the Appellate Division of the Supreme Court of the State of New York in *City of New York* v. *Chapman Docks Company*, 1 A. D. 2d 895, 149 N. Y. Supp. 2d 679

(2nd Dept., 1956), to mean that where an owner of property interposes an answer setting forth a substantial equity in the tax-delinquent parcels, the Court should direct a separate sale pursuant to Section 986 of the Civil Practice Act for the purpose of enabling the owner to receive the surplus proceeds.

The difficulty of appellants in the instant case stems essentially not from any failure of the statute to provide for a surplus sale but from their own failure to file an answer in the foreclosure action after notice thereof was mailed to them and admittedly received by their employee.

4. The in rem foreclosure statute applies to all tax-delinquent real property, improved and unimproved, and has been so construed by the courts of New York.

If this Court entertains the present appeal with respect to the Powell Street property, another contention of appellants requires a brief comment.

The appellants apparently intimate (Brief, pp. 9-10) that the in rem foreclosure statute here involved (Title D, Chapter 17, Admin. Code) was intended to apply only to vacant property and was therefore wrongly used with respect to the Powell Street property, which was an improved parcel. The argument is based on a reference to the legislative history not of the statute here involved but of a similar statute applicable generally throughout the state, *i. e.*, Title 3, Article VII-A, of the Tax Law, enacted by Laws of 1939, Chapter 692. Appellants quote from the Governor's bill jacket for that statute to show that it was "designed to put back on the tax rolls, uninhabited lands and vacant lots."

There are several answers to this contention. In the first place, Title 3, Article VII-A, of the Tax Law contains no provision limiting it to vacant parcels. By its terms it is made applicable to all real property. Moreover, even if Title 3, Article VII-A, were held to be limited to vacant property—an assumption we regard as untenable—it would not follow that Title D, Chapter 17, of the Administrative Code—the statute here involved—was so limited. Title D, Chapter 17, on its face is applicable to all real property and there is no warrant for reading into it an exclusion of improved real estate.

In any event, the inquiry into the merits of this contention need not be pursued further. For the contention was urged by appellants in the New York Court of Appeals and necessarily rejected by reason of the affirmance of the decisions of the lower courts. The interpretation of the state statute by the Court of Appeals is binding on this Court. *Kedroff* v. *St. Nicholas Cathedral,* 344 U. S. 94, 99 (1952); *Winters* v. *New York,* 333 U. S. 507, 514 (1948); *Hebert* v. *Louisiana,* 272 U. S. 312, 317 (1926); *Knights of Pythias* v. *Meyer,* 265 U. S. 30, 32-33 (1924).

CONCLUSION

The order appealed from should be affirmed insofar as it relates to the 45th Avenue property. The appeal should be dismissed as moot insofar as it relates to the Powell Street property or, in the alternative, the order should also be affirmed as to that property.

November 2, 1956

Respectfully submitted,

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APPENDIX

Laws of 1956, Chapter 481

Section 1. The administrative code of the city of New York is hereby amended by adding a new section thereto, to be section D17-25.0, to read as follows:

§ D17-25.0 Application for conveyance from the city of its right and interest to certain lands, real estate or real property acquired in foreclosure actions in rem.

a. The board of estimate, in its discretion, may grant, convey and release all of the property, right, title and interest of the city in any lands, real estate or real property heretofore or hereafter acquired by the city by virtue of any action in rem brought pursuant to the provisions of this title to any person, association or corporation which, on the date of the filing of the list of delinquent taxes in such action, had been vested with title thereto, provided, however, that no grant, conveyance or release may be made of any such lands, real estate or real property or any portion thereof which the board has assigned to any agency of the city, and provided further that the grantee by such grant, conveyance and release shall receive thereby the title which was vested in the owner on the date of the filing of the list of delinquent taxes, subject to any and all liens, encumbrances and defects which existed on said date except in this section otherwise provided, including the lien or encumbrance, if any, of the applicant.

b. Such person, association or corporation shall apply in writing to the board of estimate for such grant, conveyance or release within four months after the date of such

acquisition by the city, and excepting that such application may be made within two months from the effective date hereof where such lands, real estate or real property were acquired by the city pursuant to this title prior to such effective date, providing the city has not sold or agreed to convey the lands, real estate or real property involved to a successful bidder nor assigned the same to any agency of the city. Any person, association or corporation which, on the date of the filing of the list of delinquent taxes in an action in rem brought pursuant to the provisions of this title, had a lien or encumbrance of record or pursuant to a policy or written agreement of insurance enuring to the benefit of an owner of the title, lien or encumbrance, entered into prior to the commencement of an action to foreclose brought pursuant to this title, shall have the same right as the owner, within the same period of time herein set forth, to apply to the board for such grant, conveyance or release, excepting that no such application shall be considered by the board until the full period of time of the owner to make application shall have expired and the owner shall have failed to make such application. After the effective date hereof and during the periods of time provided in this subdivision the city shall not sell such lands, real estate or real property to any person, association or corporation other than one entitled to apply for a grant, conveyance or release as herein provided, but this prohibition shall not operate or be construed to deny to the board of estimate the right within such periods of time to assign such lands, real estate or real property to any agency of the city. Any application made pursuant to

the provisions of this section shall contain a statement of the identity and interest of the applicant and that the applicant has not accepted or agreed to accept any consideration or other assistance for making this application in return for his promise or agreement to convey, transfer or assign his right, title and interest in the lands, real estate or real property subsequently to be conveyed to him by the city pursuant to this section. Such application shall be verified and where made by the owner, lienor or encumbrancer of record of or against the lands, real estate and real property sought to be granted, conveyed or released shall be accompanied by the duly written certificate or certified search of the city register, county clerk or clerk of any surrogate's or other court of record, or by the duly written certificate or certified search of any title insurance, abstract or searching company, organized and doing business under the laws of this state, attesting that the applicant for such grant, conveyance or release was on the date of the filing of the list of delinquent taxes such owner, lienor or encumbrancer of record. In the event that the the estate, lien or interest of the applicant shall have been derived by reason of the death of the owner, lienor or encumbrancer of record of or against such lands, real estate and real property on the date of the filing of the list of delinquent taxes, and such derived estate, lien or interest of the applicant shall not appear of record, proof of such facts as shall be sufficient to attest to the derivation of such estate, lien or interest shall be made by affidavit of the applicant and other persons having information with relation thereto. The board of estimate may from time to

time prescribe additional requirements to be inserted in the application which are not inconsistent with the provisions of this section. Such certificates, searches and affidavits shall be transmitted by the board to the corporation counsel who shall examine them and report to the board upon the sufficiency of such documents to comply with the provisions of this section. The board of estimate shall cause to be prepared and delivered to such applicant a grant, conveyance or release of the right, title and interest of the city in and to such lands, real estate or real property provided only that the title which the applicant shall receive thereby shall not be free from any and all liens, encumbrances and defects which existed on the date of the filing of the list of delinquent taxes, and upon the delivery of such grant, conveyance or release such liens, encumbrances or defects including the lien or encumbrance, if any, of the applicant shall thereupon reattach. Such grant, conveyance or release shall be in such form as the corporation counsel shall approve.

c. Such grant, conveyance or release shall be delivered to the applicant upon the payment as to each separate parcel so conveyed of the following sums of money:

1. The principal amount due on all delinquent tax liens appearing on the list of delinquent taxes upon which the judgment of foreclosure was based with interest at the rates appearing on the said list to the date of payment.

2. The principal amount due on all unpaid taxes, assessments, sewer rents and water rents which accrued and became liens on a date or dates subsequent

to the date or dates on which the delinquent tax liens appearing on the list of delinquent taxes accrued and became liens with interest at the rate or rates provided by law.

3. A sum which shall be equal in the aggregate to the amounts of costs awarded by the provisions of sections fifteen hundred four-a, subdivision one, fifteen hundred twelve and fifteen hundred twelve-a of the civil practice act, together with an additional sum not exceeding three hundred dollars equal to two and one-half percentum upon the total of the amounts due pursuant to paragraphs one and two of this subdivision. The total amount shall be paid pursuant to this paragraph for each separate parcel conveyed shall not exceed the sum of five hundred and five dollars.

4. Any deficiency which may result to the city after all payments made by it for the repair, maintenance, and operation of the lands, real estate and real property shall have been charged or debited in the appropriate accounts of the city and all rents, license fees and other moneys collected by the city as a result of its operation of the said lands, real estate and real property shall have been credited in such accounts. Any contract for repair, maintenance, management or operation made by the city on which it shall be liable, although payment thereon shall not have been made, shall be deemed a charge or debit to such accounts as though payment had been made. The amounts paid and collected by the city as shown in its accounts and

the necessity for making the several payments and contracts to be charged as herein provided shall be conclusive upon the applicant.

5. Any and all costs and disbursements which shall have been awarded to the city or to which it may have become entitled by operation of law or which it may have paid or become liable for payment in connection with any litigation between it and the applicant or any person having an estate or interest in the lands, real estate and real property to be conveyed resulting directly or indirectly from the foreclosure by action in rem of the delinquent taxes affecting lands, real estate or real property.

Any and all rents, license fees and other moneys due and owing to the city which, on the date of the making of such grant, conveyance or release shall not have been collected by it, and the right to collect and bring actions to collect the same shall be assigned, transferred and set over to the applicant by an instrument in writing.

d. A person who, in the promotion of his own interests or to derive pecuniary benefit, gain or profit, for himself or for any person, association or corporation, shall solicit, induce, or agree to cause, or cause any other person, association or corporation to apply for a grant, conveyance or release pursuant to this section and gives or promises to give such applicant any consideration or other assistance in return for the applicant's promise or agreement to convey, transfer or assign the right, title and interest in the lands, real estate or real property subsequently to be conveyed to such applicant by the City pursuant to this sec-

tion, or a person, officer or director of an association or corporation, who, being entitled to apply for a grant, conveyance or release pursuant to this section, in return for a consideration or other assistance by or accepted from another person, association or corporation not entitled to so apply, agrees to make such application and promises, or in any way binds himself to sell, transfer or assign his right, title and interest in the lands, real estate or real property subsequently to be conveyed to him by the City pusuant to this section, is guilty of a misdemeanor.

e. The right to apply for a grant, conveyance or release granted by this section except for the rights provided by section three hundred eighty four of the charter, shall be the exclusive method by which any person, association or corporation which by this section shall be entitled to make application may secure a grant, conveyance or release of such lands, real estate and real property.

§2. This act shall take effect immediately.